

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
3 -----x
4 GREAT LAKES INSURANCE, SE,
5 Plaintiff/Counter-Defendant.
6 v. No. 4:20CV40020DHH
7 MARTIN ANDERSSON,
8 Defendant/Counter-Plaintiff.
9 -----x

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CONTINUED DEPOSITION OF ANDREW BALL, a
witness called on behalf of the Defendant,
taken pursuant to the provisions of the
Massachusetts Rules of Civil Procedure,
before Linda Bernis, a Registered
Professional Reporter and Notary Public in
and for the Commonwealth of Massachusetts,
held in Tortola, British Virgin Islands,
on Friday, January 21, 2022, commencing
at 10:00 a.m.

24



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1 APPEARANCES:

2

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7 Counsel for the Defendant

8

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10 By Michael Goldman, Esq.

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13 Counsel for the Plaintiff

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15 (Present via Zoom)

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I N D E X

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Continued Deposition of: Direct

3

ANDREW BALL

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By Ms. Niemeyer 5

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PROCEEDINGS

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THE STENOGRAPHER: This is Linda

3

Bernis, a Registered Professional Reporter

4

and Notary Public in the Commonwealth of

5

Massachusetts.

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This deposition is being taken

7

remotely. The witness is appearing remotely

8

from Tortola, British Virgin Islands.

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The attorneys participating in

10

this proceeding acknowledge their

11

understanding that I am not physically

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present in the proceeding room, nor am I

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physically present with the witness and that

14

I will be reporting this proceeding

15

remotely. They further acknowledge that in

16

lieu of an oath administered in person, the

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witness will verbally declare his testimony

18

in this matter under the pains and penalties

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of perjury. The parties and their counsel

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consent to this arrangement and waive any

21 objections to this manner of proceeding.

22 Please indicate your agreement by
23 stating your name and your agreement on the
24 record, after which I will swear in the

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5

1 witness.

2 MS. NIEMEYER: Michelle Niemeyer
3 counsel for Martin Andersson, and I agree to
4 consent.

5 MR. GOLDMAN: Michael Goldman
6 counsel for Great Lakes, and we consent.

7 (Witness sworn.)

8

9 DIRECT EXAMINATION

10 BY MS. NIEMEYER:

11 Q. Good morning and welcome back.

12 A. Thank you.

13 Q. Third time at this rodeo, Mr. Ball. You're
14 a brave man.

15 You've been named as an expert
16 witness in this matter and that's why you're
17 here today. Are you aware of that?

18 A. Yes.

19 Q. And I'm going to start the deposition by

20 showing you a document which was filed by,
21 or served on us. And I'm going to share
22 that document. Give me one second so I can
23 do that through the Zoom call.

24 I'm going to share this document,

↑

6

1 which has the title on it Plaintiff's Expert
2 Disclosures naming you at Caribbean Marine
3 Surveyors Limited as an expert.

4 Mr. Ball, have you seen this
5 document?

6 A. Yes, I saw it at the very least yesterday in
7 the file, but, I believe, I've seen it
8 before that as well.

9 Q. Have you reviewed the part that describes
10 the scope of your opinion?

11 A. Yes, that second paragraph after the address
12 there.

13 Q. Yes.

14 A. That's fairly equivalent to what's written
15 in our report as well.

16 Q. Okay. Is there anything about that that is
17 inaccurate in any way that we should know?

18 A. Let me read it one more time so we get it

19 perfectly accurate.

20 Q. Okay.

21 A. That's correct.

22 Q. We will be going through the records that
23 are named in here. It refers to a statement
24 of expert witness' opinions, data, or other

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7

1 information. These are the things that were
2 attached, and then it attaches a number of
3 things including your resume, an August 16th
4 report, a September 4th report, maps you
5 produced and an invoice about your
6 compensation.

7 Mr. Ball, are there any other
8 written materials that you produced that
9 were not included in this list?

10 A. To my recollection, no.

11 Q. One of the things that is listed as number
12 two, we'll talk about the opinions but I
13 want to get into what number two is about.
14 Data or other information considered by the
15 expert witness in forming your opinion.

16 Can you describe for me what was
17 considered when you formed your opinion?

18 A. We would have listed that in our report.
19 Let me just go back since it's been quite
20 some time since we wrote this stuff.
21 Obviously, we would have considered the
22 verbal statement from Mr. Andersson
23 following the incident. Probably some of
24 the documents filed with his second account

↑

8

1 as well. We would have looked, as long as
2 we could find it and the report should say
3 if we could or couldn't, into reported
4 weather at the time. And, of course, the
5 particulars of the vessel itself and what we
6 know about that vessel. I suppose we could
7 include navigational charts in there as
8 well.

9 Q. Is it fair to say that part of your expert
10 opinion derives from your personal
11 observations of the vessel at the site where
12 it was grounded?

13 A. Absolutely, yes. Physical observations of
14 the vessel, I suppose, you could call those
15 personal.

16 Q. And they were your observations, correct,

17 you were the person who was there?

18 A. Correct.

19 Q. When you say Mr. Andersson's verbal
20 statement after the incident, what statement
21 are you referring to?

22 A. There's a statement we took at a bar, a
23 coffee shop, I think, probably a couple of
24 days after the incident, and he later signed

↑

9

1 and sent back to us.

2 Q. Now, that statement you just said at a bar
3 and then you said at a coffee shop. Which
4 was it?

5 A. It was a coffee shop.

6 Q. Do you recall what time of the day you had
7 that conversation?

8 A. I think, I probably would have written it on
9 the statement. We can see if we can find
10 it.

11 Q. We can look, give me one second, I have that
12 for you. I'm going to share another.

13 First, let's mark as Exhibit 1 the
14 expert disclosure.

15 Actually, Linda -- Mike, what did

16 we mark yesterday.

17 MR. GOLDMAN: Just a moment. We
18 parked up to 34 so the next should be 35.

19 MS. NIEMEYER: Linda, we're going
20 sequentially including the ones from the
21 other deposition. This will be number 35.

22 (Exhibit 35 marked
23 for identification.)

24 Q. I'm going to go ahead and stop sharing this

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10

1 document.

2 A. And I have that date for you.

3 Q. We won't need it right away. So why don't
4 you answer the question and we will go back
5 to it. Give me the date as long as you're
6 going to.

7 A. It was December 21st, according to our
8 report of December 23rd of 2019.

9 Q. Do you recall what time of day you actually
10 sat down and spoke with Mr. Andersson?

11 A. No, but I seem to recall having breakfast,
12 so probably in the morning.

13 Q. Do you remember if it was before or after
14 you visited the boat?

15 A. To my recollection, afterwards.

16 Q. The things that were said to you there was a
17 statement, when you say there was a
18 statement taken that he signed afterwards,
19 is it accurate to say you took notes during
20 that and then you wrote it up later?

21 A. Correct. And you have those.

22 Q. Okay. We will look at those. There is a
23 handful of things that I want to look at
24 with you to see if they were relevant to the

↑

11

1 opinion.

2 The opinion that you made, I want
3 to get back to that for a second. First, I
4 want to get to the basis of it. So you had
5 this conversation. You had physical
6 investigation that you particularly took
7 part in. Was there anyone else involved in
8 that with you?

9 A. Mr. Andersson was there. There were a
10 number of security guards on the boat.
11 There was a man that we were considering as
12 a salvager, had moved to salvage. I can't
13 remember whether he came to the boat or met

14 us on the beach afterwards, but he might
15 have been there.

16 Q. What was your mission at that point, were
17 you expecting to be an expert witness when
18 you went to the boat that day?

19 A. No. We sort of approach all of these things
20 in the aspect that anything we write will
21 come under question at some point, or it
22 could. But at the same time, we didn't have
23 a predetermined outcome. The intention at
24 that point was really to assess the scope of

↑

12

1 damages to the boat.

2 Q. Did you, at that point, had you considered,
3 for instance, you mentioned that there was
4 the meeting with Mr. Andersson. Were you
5 privy to information that had been sent to
6 Mr. Bailey of your company about the
7 circumstances of the event?

8 A. Yes, I would have been privy to everything
9 that was sent to Bill. Obviously, this is
10 something where we had to move pretty fast
11 right before the holidays, so there would
12 have been some gaps, I don't want to say I

13 know 100 percent of what he knew because, of
14 course, as soon as I got word I jumped on a
15 plane and headed out to a fairly remote area
16 of the Caribbean. I sort of tried to absorb
17 as much information as I can. But, again,
18 the scope of what I was there to do is to
19 investigate the loss. The rest of it
20 becomes potentially relevant later but the
21 physical evidence is what we are there to
22 look at.

23 Q. Are there any particular things that you're
24 asked to look for when you're doing this

↑

13

1 type of investigation by the insurance
2 company that don't involve the condition of
3 the boat?
4 A. Part of what we investigate is cause of
5 loss. If we saw a boat that there was
6 clearly a failure in routine maintenance or
7 it was clearly unseaworthy due to its
8 equipment, we would opine that it was
9 unseaworthy due to its equipment, then those
10 are the sort of things we would note.

11 It's not so much, it's not like we

12 have a specific checklist, it's just sort of
13 a standard industry practice. I can't say
14 that they say, alright, we want you to check
15 A, B and C, but it's somewhat inferred that
16 that's our responsibility as part of
17 investigating the loss responsibly.

18 Q. Are you expected to have a familiarity with
19 the policy language and what's in it before
20 you go?

21 A. That depends whether we're acting as an
22 adjuster or not.

23 Q. What were you acting as in this instance?

24 A. In this case, I don't believe we were acting

↑

14

1 as an adjuster.

2 Q. Do you have an adjuster's license?

3 A. Yes. Here in the BVI, fondly enough, they
4 license the company not the individual and
5 our company is licensed in the BVI.

6 Q. Do you personally have any education as an
7 insurance adjuster or in insurance matters
8 specifically?

9 A. Not outside of Caribbean Marine Surveyors,
10 no. I mean, you could consider the first

11 couple of years of what I did as an
12 apprenticeship perhaps, but I don't have a
13 formal education in it, no.

14 Q. Have you been asked to provide any kind of
15 expert opinion related to application of the
16 insurance policy to the circumstances here?

17 A. You mean in terms of contract law type deal?

18 Q. In terms of whether there are policy
19 provisions that apply to this incident?

20 A. Our office has, absolutely.

21 Q. Do you know if you're expected to give that
22 kind of opinion in this case?

23 A. I'm not sure I understand the question.

24 Q. Do you know whether, for instance, if this

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15

1 case were go to trial have you been asked to
2 be a witness to testify about policy
3 provisions or about how it would apply to
4 the case?

5 A. No, I don't believe that's a correct
6 statement, if I understand it correctly.

7 Q. Is it fair to characterize your involvement
8 or your expertise more in relation to the
9 boat itself and to seaworthiness or boat

10 handling?

11 A. Yes, my expertise is not in law, it's not in
12 contract provisions, it's in boats and
13 seafaring effectively.

14 Q. With that, I would like to go to a different
15 document, which has been provided to us,
16 which is your resume. A lot of these things
17 have been marked already so we will use them
18 again. It's Exhibit 17.

19 A. I do have your One Drive here in front of
20 me, if that helps.

21 Q. So Exhibit 17 -- I'm just scrolling. Do you
22 see that?

23 A. Yes.

24 Q. Is this your resume?

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16

1 A. It is indeed.

2 Q. Is it a current version of your resume?

3 A. It was current when we submitted it. Since
4 then, I'm in the process of opening another
5 yacht management firm here. But other than
6 that, yes.

7 Q. I want to ask you a little bit about your
8 background, generally. I gather from this

9 that you are from Canada originally?

10 A. I am indeed. Let me qualify that because
11 that's sort of a difficult question. Born
12 in France; raised in England until I was 11;
13 high school and university in Canada. So
14 not entirely originally, but yes.

15 Q. Are your parents French or English or both?

16 A. They are dual citizens of England and Canada
17 both of them. And both of them have a mixed
18 history again throughout their lives.

19 Q. Okay. That's interesting.

20 So you finished your upper school
21 so-to-speak in Ontario; is that correct?

22 A. My secondary school, yes.

23 Q. And then I see a BFA in technical production
24 at Ryerson University. Where is that?

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17

1 A. Ryerson is in Toronto. I think it's
2 important to note here that that is a study.
3 I never finished that degree.

4 Q. You studied. What is technical production?

5 A. That is actually, you could call it
6 technical theatre. Being what they would
7 call in high school a techy.

8 Q. I'm not saying anything because I was one of
9 those people myself. I was making costumes
10 for theatre.

11 You studied technical production
12 and then you left there, or you left that
13 program and you went into a bachelor of
14 commerce program; is that correct?

15 A. Correct.

16 Q. And did you graduate from that program?

17 A. I did not.

18 Q. And then you went on to -- and I wasn't
19 certain what this acronym meant. What does
20 FdSc mean?

21 A. That is a British definition. And it's, I
22 suppose you could consider it somewhere
23 between a college diploma and a university
24 degree. Effectively, I went to a cadetship

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18

1 there in order to do a lot of my yachting
2 paperwork all at once. So I did my yacht
3 master's, which is a certificate of
4 competency, my STCW which is the standards
5 of training and certification for watch
6 keepers which is things like firefighting,

7 first-aid, sea survival, etcetera.

8 I did a rescue boat certification,
9 power boat certification, diesel engine
10 certification, a number of certifications
11 all in one. And they were all sort of, I
12 don't mean to call them vocational, hands-on
13 type of certifications.

14 As far as cadetship they had
15 enrolled everybody in this foundations
16 degree in order to sort of create some more
17 academic paperwork out of it. Which, again,
18 I actually never completed.

19 Q. So this degree program, is it fair to say
20 that that was a program intended to prepare
21 you to work in the marine world and as crew
22 on a boat or as an engineer or something
23 like?

24 A. No, not really, no. The other

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19

1 qualifications were hiring crew, for
2 instance. We would never look for this
3 degree. I think it was sort of more
4 designed as a way to utilize the other
5 qualifications that everybody needed to do

6 anyway. And sort of fill in some gaps to
7 create a, more of an academic degree out of
8 it per se. I would liken it to, you know,
9 in university education we sort of had all
10 the specialized classes in what we were
11 studying, and then there were the electives
12 that really had nothing to do with it but
13 made you a well-rounded student and
14 obviously sort of taught a little bit more
15 about the discipline of studying and
16 learning.

17 I would count what this added to
18 that cadetship as sort of those elective
19 classes, if you will.

20 Q. What was the cadetship all about?

21 A. The cadetship was, basically, they had set
22 up a program as a sort of a zero to hero
23 program for people that wanted to go into
24 super yachts. So it was combination of

↑

20

1 classroom and at sea learning along with
2 work placements, per se, or, well, they
3 didn't really place us, but there were work
4 phases of the program, because as a mariner

5 part of what you have to do is not just a
6 case of classroom studying and studying with
7 an instructor you also have to generate sea
8 time. The realm of yachting I'm in most
9 people, I think the minimum sea time for an
10 yacht master is something like 3,000 miles.
11 It's quite small. Whereas, if you wanted to
12 go up to master 3,000 gross ton, sort of the
13 ticket you would have to drive big crew
14 ships and cargo ships type thing, and, of
15 course, 350 foot yachts. There's not too
16 many of those around. Then you have to
17 generate sea time in various tonnage
18 categories. So it's a bit of a stair
19 climbing exercise, you can't just jump
20 straight in.

21 The program was designed, you sort
22 of do half a year at school, you do the
23 certifications you can, go away for half a
24 year, get placed on a yacht of the correct

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21

1 tonnage, generate your sea time then come
2 back and climb the next step and so on.

3 For me, I went out to the

4 Caribbean, I got hired up in what we would
5 call the small craft yachting industry,
6 which is mostly under 24 meters, you'll see
7 there's a few on here that I have done that
8 are over because the licenses are actually
9 based on tonnage. So I got sucked into this
10 and offered a couple of jobs and climbed the
11 ladder a different way, per se.

12 Q. Okay. So you were hired on and decided not
13 to go back and continue on that?

14 A. Correct. There's two ways; sort of North
15 Pole and South Pole thing, two opposites.
16 The school I was attending was in the UK,
17 where they are based on the Mediterranean
18 season. There you would do your industry
19 phase in the summer, you would go to class
20 in the winter. Here, of course, our high
21 season is the winter and our hurricane
22 season when we shut down is in the summer,
23 so it just didn't work.

24 Q. In 2000, I gather, was time when you took

↑

22

1 off and you started working full-time?

2 A. Correct.

3 Q. I see here you also have studying marine
4 surveying, yacht and small craft surveying
5 at the International Institute of Marine
6 Surveying.

7 A. Correct.

8 Q. You're studying that now?

9 A. Yes, I kind of thought it would be useful to
10 have another piece of paper and maybe
11 actually finish one. That is something I
12 have been doing for quite some time. I
13 started that when I started working for
14 Caribbean Marine Surveyors back in 2016.
15 Then in 2017 we got hit with two Category 5
16 hurricanes here. I didn't have power for
17 eight months. We were also incredibly busy.
18 I learned a lot more in sort of trial by
19 fire than in the course.

20 My feeling on the course material
21 now is, there's not a lot of new material
22 I'm learning. There's a couple of gaps to
23 fill in. It's more of a box ticking
24 exercise to me. But, obviously, I deferred

↑

1 the course after the hurricanes and

2 restarted more recently, I think, shortly
3 before the Pandemic hit.

4 Q. I want to just go down to there's more
5 qualifications at the bottom of your resume
6 and I don't want to ignore those. On the
7 second page. It says, Supplementary
8 Qualifications.

9 Are there qualifications here that
10 were relevant to your assessment of this
11 situation and what you ultimately gave as
12 your opinion?

13 A. I would say so, yes. It's certainly not an
14 exhaustive list, but it is sort of the upper
15 notes of it.

16 International Association of Marine
17 Investigators, well, it's what it says. I
18 am part of them which is a form of
19 accreditation again. If I had a, for
20 instance, a history of poorly assessing
21 claims and incidents people could report me
22 to them and they would take away my
23 accreditation there.

24 Q. Let's go through these one at a time. With

↑

1 the International Association of Marine
2 Investigators, is there any kind of a test
3 or threshold credit you have to have to be
4 able to be part of that organization?

5 A. To join, no. Well, sorry, I probably
6 shouldn't say that. There isn't a test per
7 se. But I'm pretty sure they would have
8 asked me for a resume at the very least.
9 Pretty much all of these organizations want
10 some sort of resume, some sort of
11 demonstration that you are somehow qualified
12 and/or experienced and perhaps some
13 references.

14 Q. Is there some kind of a board that selects
15 then who gets to be part of it?

16 A. Correct. Most of these also have multiple
17 levels of accreditation. The people that
18 sort of want to stick more initials on their
19 e-mail and resume you can go and do the
20 test.

21 One of the things that we really
22 end up having a problem with down here is,
23 for instance, in the BVI we're working with
24 MCA standards, so that's the British

1 standards and not the U.S. Coast Guard
2 standards. Most of these organizations even
3 though they have international in the title
4 or claim to be international test only on US
5 standards which is not something that we
6 use. There's a lot of crossover. The
7 standards are pretty equivalent to each
8 other, but their very small intricacies are
9 not. Small things, like in England they
10 want solid propane lines on a boat and in
11 the US they want flexible ones. The
12 standard of safety is still there, but the
13 small materials, the small type of
14 approvals, things change.

15 Q. And the Society of Accredited Marine
16 Surveyors Surveyor Associate, commonly
17 referred to as the acronym SAMS?

18 A. Correct.

19 Q. How do you qualify to belong to SAMS as a
20 surveyor associate?

21 A. Same thing; I believe, when I signed up, it
22 was quite some time ago, you submit a
23 resume, you probably need some references as
24 well, and they do make, they would have

↑

26

1 needed a resume because they do make an
2 assessment towards a later upgrade in terms
3 of how many years of experience as a
4 surveyor your resume is equivalent to. So
5 when I applied with them, being accredited
6 by them is actually a condition of our
7 insurance.

8 When I signed up with them, I had
9 just signed on with Caribbean Marine
10 Surveyors, it was my first surveying job,
11 and I think they gave me a year or two in
12 equivalent experience before I even actually
13 stepped foot in the field.

14 Q. Did they have any kind of a test of your
15 skills to be able to qualify?

16 A. They did have a test. I'm not sure if there
17 was a skill based component. A lot of these
18 organizations have some sort of a quiz on
19 their code of ethics which is obviously the
20 most important part to them as you join. I
21 know SAM will not let you in at least
22 without passing that test. We've had a
23 couple of other staff members join lately.

24 I honestly can't recall if there's anything

27

1 skill based in that testing.

2 Q. Marshall Islands IMI Qualified Individual.

3 What is that?

4 A. The Marshall Islands' shipping registry

5 effectively is IMI. I'm qualified by them,

6 again, based on resume to certify boats

7 under 24 meters on behalf of the Marshall

8 Islands.

9 Part of what we do is not just

10 inspections for insurance companies, but we

11 also inspect for flag states. The next item

12 on the list will come to this as well, but

13 this one is particular to anything with a

14 Marshall Islands flag.

15 Q. That's a common flag for mega yachts,

16 correct?

17 A. It is. We don't do mega yachts. But by

18 definition mega yacht is over 24 meters so

19 we do under 24 meters. That's in waterline

20 length not length overall, probably not

21 relevant but just to be particular.

22 Marshall Islands is a common sort

23 of flag of convenience, if you will. They
24 used to have some fairly lax safety

↑

28

1 regulations. They have actually gotten a
2 lot better, a lot stiffer on their
3 regulations. We are seeing less and less
4 people flag Marshall Islands because it's
5 different and difficult.

6 Q. It's putting you out of business in other
7 words.

8 A. Sort of. I don't get to write the rules, I
9 just get to follow them.

10 Q. What is this acronym MECAL A3?

11 A. MECAL, I actually have no idea what it
12 stands for or if it's an acronym or just a
13 word. It is a British certifying authority
14 for the MCA. The way that the MCA, which is
15 the Maritime Coast Guard Agency, which is
16 sort of the British version of their
17 shipping registry; if you will, the way they
18 work is they will, when a boat is flagged
19 under registry, whether it's BVI, Bermuda,
20 Cayman, UK, etcetera, the only people that
21 can certify those boats as compliant are on

22 a short list of certifying authorities. And
23 there's probably 10 or 15 of them. And so
24 MECAL is one of those certifying

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29

1 authorities. They accredited me as one
2 there surveyors to do coding inspections.
3 The A3 designation is basically the sort of
4 level of surveyor you are within the
5 organization. It determines sort of what
6 you can do, how much scrutiny is applied to
7 what you do. And, basically, A is the top
8 level, I believe, and 3 basically limits me
9 back down to 24 meters, and we really have
10 no desire to do anything above that.

11 Q. So this is specific to the physical plant of
12 a boat and inspecting that physical plan and
13 its systems, correct?

14 A. Correct. So MECAL accredits us for purchase
15 surveys, damage surveys, build surveys.
16 It's all engineering based.

17 Q. MCA/RYA Master of Yachts 200 ton.

18 A. So that's my latest certificate of
19 competency which basically allows me to sail
20 anything up to 200 tons with up to 12 paying

21 passengers onboard.

22 Q. American vernacular that would be your
23 captain's license, correct?

24 A. Yes, the equivalent would be sort of U.S.

↑

30

1 Coast Guard 200 ton, there's some
2 inconsistencies but that's the closest
3 thing.

4 Q. What do you have to do to qualify for that
5 certification?

6 A. Don't count me on the specifics here, but
7 ballpark something like 3,000 sea miles, a
8 shore base exam, and at sea exam, that took
9 about four days. There's a certain number
10 of skipper passengers at night that have to
11 be over a certain distance, a certain number
12 of skipper passenger in general that have to
13 be over a certain distance. Those distances
14 are not measured in hours they are measured
15 in miles, but each of them took more than 24
16 hours. To be honest, I would have to go
17 back to the syllabus and see exactly what it
18 was. It's quite extensive. To do a
19 commercial yacht master program most people

20 aren't going to do that, well, they are
21 certainly not going to do that in less
22 two months.

23 Q. Is this something that is typically you're
24 building that experience as you're working

↑

31

1 on boats?
2 A. You don't have to. It really varies. Where
3 I was in the UK there were actually a lot of
4 kids that hadn't been to university, they
5 sort of wanted to go a gap year sail around
6 on super yachts and live large. The program
7 was quite attractive to those people. And
8 they could come and do a zero to hero. Most
9 of them wouldn't pass. It's a bit like
10 learning to fly, you can't go from nothing
11 to everything. You're better off taking it
12 slow and learning to fill in the gaps.

13 In my case, I have been sailing
14 since I was pretty small, probably seven or
15 eight. So I went to get the paperwork so
16 that I could work commercially.

17 Q. This was the culmination really of why you
18 went to, was no Ryerson, the school in

19 England?

20 A. United Kingdom Sailing Academy, yes.

21 Q. Right.

22 A. Which was tied in with, whatever it was, the
23 University of Plymouth.

24 Q. You completed what you needed to do to get

↑

32

1 that credential which was your goal for that
2 program to begin with?

3 A. Correct.

4 The other thing I will say about
5 the master yacht program, just to give it a
6 little bit of context, years ago, probably
7 at least 20 years ago, the yacht master
8 program was designed by RYA, Royal Yachting
9 Association, as a recreational program. It
10 was designed to give people more confidence
11 on their own boats and probably get them a
12 break on their insurance as well. It just
13 makes the layman safer.

14 It then evolved and the MCA
15 realized that they didn't really have any
16 method to train people for small craft. So
17 the MCA recognized it as a commercial

18 license provided it came with a valid
19 seafaring medical and the standards of
20 training and certification for watch keeping
21 which is we talked about earlier, which is
22 the firefighting, the first aid, the sea
23 survival. That's something that is common
24 to anybody that works anywhere in the world

↑

33

1 commercially on a boat, you have to have
2 that, even if you're a shopkeeper on a crew
3 ship.

4 Q. That's the Master of Yachts. Now, the BVI
5 Boatmaster Grade II, what's that?

6 A. The BVI has its, basically, revenue
7 generating fee. Even though they are an MCA
8 registry they don't recognize the MCA
9 licenses straight off the bat and have
10 decided that they need to, now they issued
11 an endorsement on that license. Back when I
12 started here you had to go through a
13 separate licensing process with the Virgin
14 Islands Shipping Registry, which also
15 involved its own testing regimen. It was
16 somewhat partial. They basically took the

17 yacht master at its face value in terms of
18 sea time. In terms of the hands-on
19 knowledge seafaring skill, but they did do a
20 written test on some of their local small
21 commercial vessels code and just some of the
22 broader points that everybody really should
23 know, probably in a way just to qualify that
24 the yacht master is somewhat real.

↑

34

1 There was a period, or at least
2 there's rumor to be a period back in the
3 nineties where the yacht masters were, they
4 called them picnic factories you could sort
5 of go out to the Med and pay for a nice
6 vacation and come back with the yacht
7 master. And the RYA cracked down on that.
8 Q. MCA STCW 95 basic crew training, what is
9 that?
10 A. That is the standards of training and
11 certification for watch bookkeepers. That's
12 the licensing, I won't call it licensing,
13 certification I was talking about that every
14 seafarer has to have. It's under
15 international convention.

16 So that involves, at the time it
17 involved four modules and they've added a
18 fifth now. So there was a firefighting
19 module where you spend three or four days in
20 a firehouse. Full SVA, full host teams,
21 proper firefighter training. There's a
22 day-long first aid course which is similar
23 to what you would consider as your St. John
24 Ambulance, EFR, or whoever you use. Except

↑

35

1 it's a little more spun towards the marine
2 environment, and, of course, it is
3 standardized through this convention.

4 Then there's what they call
5 personal safety in social responsibility,
6 which sort of blends between a number of
7 things. Some of it is just about
8 situational awareness, making sure you've
9 got a good head of your shoulders. The
10 other is almost more of an ethics course,
11 don't go from port to port knocking up
12 random people. At least they are teaching
13 it.

14 And then there is the sea survival

15 module which basically involves things like
16 combating hypothermia; you'll get in a pool
17 because it does have to be in confined water
18 and learn how life raft works, what's in it,
19 how to roll it over if it's upside down when
20 it deploys. The finer point. In honesty, I
21 just witnessed one of these courses last
22 week. And I think it's a far cry from
23 anything that you would actually need to
24 know in a real situation, but at the same

↑

36

1 time at least you know sort of what you're
2 looking at and what's there in terms of the
3 equipment.

4 Since then they've added another
5 module, I'm trying to remember what it is
6 now. It was probably six or seven years
7 ago, I had to do an on-line course. It
8 wasn't hands-on learning it was basically
9 just a test. They revised the convention in
10 2010 and they've added another module just
11 to sort of fill in the gap, I guess, as part
12 of that revision.

13 At that time, I did that, but, of

14 course, I'm not working commercially anymore
15 so I haven't renewed any of that, I let it
16 all lapse. My yacht master doesn't expire
17 but the commercial endorsement on it does
18 because that's based on the medical and
19 STCW.

20 Q. Now, what about the RYA Powerboat Level II?

21 A. Powerboat Level II, again, they've actually,
22 it wasn't a commercial qualification when I
23 did it, they've turned it into one. It's a
24 small powerboat course. It's a common

↑

37

1 course for the super yachting crew because
2 it enables them to drive the small tenders.
3 It takes what you do in that yacht master
4 and sort of it, it doesn't adopt the yacht
5 master because it's a separate thing. You
6 could probably do a Powerboat Level II in
7 probably three days, I think, over a
8 weekend. It's a high speed maneuverable
9 small boat driving course.

10 Q. How about the RYA Safety Boat course?

11 A. That's a little bit different. That's a
12 qualification for driving safety boats.

13 When I say safety boats, water sports,
14 escort boats, etcetera. It's not so much
15 open navigation it's more close to people in
16 the water, close to hazards. There's a
17 little bit more technical skill in that
18 course in terms of making sure you're not
19 injuring the people that in normal
20 situations would not be hanging out around
21 your propellers.

22 Q. RYA Diesel Engine Certification.

23 A. That was a much more basic diesel course
24 that I have done since then. The Royal

↑

38

1 Yachting Association puts on a diesel course
2 which, I think, it's only about a day or
3 two, and it sort of teaches you the basics
4 of diesel engines; how to change your
5 filters, how to troubleshoot your engine in
6 a very simple sense.

7 When I signed on as a service
8 manager, which I'm sure we will get to that
9 later, I actually did a number of additional
10 courses mainly through JCB in terms of
11 mechanics, hydraulics, electrics, etcetera.

12 Q. PADI Divemaster?

13 A. Master diver, I can't teach. That was
14 intentional. The next step up is an
15 instructor certificate. And really didn't
16 want to take on liability for that. I can
17 take out unlicensed or uncertified divers in
18 confined water for a discover course but I
19 can't certify people. It's effectively
20 recreational certification for scuba without
21 mixed gases, etcetera, in sort of the PADI
22 arsenal, if you will.

23 Q. MCA GMDSS Certificate.

24 A. GMDSS is the global maritime distress safety

↑

39

1 system or signaling system. It's
2 effectively a trumped up way of having a
3 long range communications license. So that
4 enables me, I think that one enables me for
5 SSB, a number of different long range
6 communication technologies for when you're
7 at sea. It is not a hand license. To do a
8 hand license you have to be able to actually
9 build the radio for components and I just,
10 you're not going to do that at sea anyway.

11 Q. I can see that. Especially in bad
12 conditions.

13 And then you have a BVI driver's
14 license.

15 A. I had a Canadian one as well. Yes, I have
16 like a car driver's license.

17 Q. Is that relevant in some way to this case?

18 A. No, I think it was relevant when I put the
19 resume together. Probably a job where I was
20 going to need to drive or something.

21 Q. See attached PDF with additional
22 certificates. I don't believe we ever
23 received any.

24 A. I don't imagine you have that. That was,

↑

40

1 again, probably something that carried over
2 on the resume. I would have updated the top
3 but not the bottom probably. I'm happy to
4 send through that PDF that I put together.

5 Basically, within it it's got
6 copies of the aforementioned certificates
7 just to show they are real. It's got a
8 number of certificates I got from JCV, for
9 instance.

10 Q. What is JCV?

11 A. Stands for John C. Banford, but it's a
12 company that makes, actually, excavators,
13 farm equipment, big yellow machines.
14 Excavators, backhoes, bulldozers, cranes,
15 tele handlers, etcetera.

16 Long story short, and I'm sure
17 you're going to move up anyway, when I was
18 the service manager at Parts & Power on
19 there, I effectively represented the
20 distributorships for a number of the major
21 machinery manufacturers; not just engines,
22 power generation, refrigeration, etcetera,
23 that provides to the small craft industry.
24 And so at the time, JCB had these courses

↑

41

1 going that they were offering for free. I
2 sort of said, well, you know, I could do
3 with some paperwork so I signed up and sort
4 of blasted through those.

5 Q. They weren't marine-related, though, it
6 sounds like, they were more land based
7 construction equipment?

8 A. I think that really depends how you look at

9 it. There's not much about an engine that
10 is marine. When we marinize a diesel engine
11 the only thing we really change is the
12 cooling system, that's it. We change heat,
13 heat exchange via the air and a radiator for
14 heat exchange by the water. There are some
15 components that will change for corrosion
16 resistance, etcetera. But the functionality
17 of a diesel engine or generator or
18 refrigeration, etcetera, is fundamentally
19 the same.

20 Q. And we do have then, I'm just going to run
21 through this somewhat quickly. You've been
22 with Caribbean Marine Surveyors since
23 February 2016, correct?

24 A. Correct.

↑

42

1 Q. Is that your only experience as a marine
2 surveyor?

3 A. That's correct.

4 Q. And is that also your only experience in
5 dealing with issues of insurance?

6 A. Correct.

7 Q. Have you had any, outside of your hands-on

8 experience, have you had other experience or
9 other education in that timeframe related to
10 insurance or related to vessels like the one
11 that was damaged in this case?

12 A. Certainly, there would have been a number
13 of -- so as part of the accreditations; be
14 it, Society of Accredited Marine Surveyors,
15 International Association of Marine
16 Investigators, or MECAL at the very least,
17 we are required to do, some of them call it
18 continuing education, some call it
19 continuing professional development,
20 etcetera. We have to do a certain number of
21 hours or certain number of courses every
22 year.

23 Obviously, studying with the
24 International Institute of Marine Surveying

↑

43

1 as well, but there have been a number of
2 classes, seminars, etcetera, that I would
3 have attended that would have been
4 investigation based. I'm sure that I
5 probably attended one or two with people
6 like ADYC that was sort of Marine Insurance

7 101. Just more out of curiosity for what
8 they say. But the bulk of my education has
9 really come from the mentorship of my boss.

10 Q. Who is your boss?

11 A. Bill Bailey.

12 Q. What's his role in that company?

13 A. He's the owner of the company. I think his
14 father was the founder, actually. But he's
15 probably been at it for 25, 30 years now.
16 He's also, of course, the authority on all
17 of reports as well.

18 Q. Do you have any kind of educational
19 qualification related to navigation?

20 A. Well, yes, yacht master involves a
21 significant amount of shore based training
22 and certification as well. There are
23 separate certificates, the surveyor portion
24 of that yacht master does generate its own

↑

44

1 certification.

2 Q. Are you qualified to teach navigation?

3 A. No.

4 Q. Do you have educational background in
5 weather?

6 A. Yes, meteorology again is part of the yacht
7 master syllabus.

8 Q. Are you qualified to teach meteorology?

9 A. No.

10 Q. Do you have any specialized education
11 related to catamaran or the handling of
12 catamarans?

13 A. Specialized education, I would say no. In
14 terms of experience probably a lot more than
15 average. Our market here is somewhat unique
16 in that probably 95 percent of our vessels
17 are catamarans. And I'm sure as we go
18 through the resume you'll see that near
19 everything that I have run is catamaran.

20 When it comes to experience through
21 the investigations and the surveys we do,
22 again, sort of 90, 95 of what we look at is
23 catamarans, which is very unusual.

24 Q. I'm going to skip down to the jobs related

↑

45

1 to captain positions. The M/Y The
2 Collection, was that a catamaran?

3 A. No, that was a mono hull. That was a 105
4 foot motor yacht with 5,000 horsepower in

5 it. Basically, a huge Italian powerboat
6 that does about 40 miles an hour. Bit of a
7 freak of an engineering really.

8 Q. And it says 2018 to present. Do you still
9 work with them sometimes?

10 A. Here and there, yes. I probably haven't
11 been on that boat since the start of the
12 Pandemic. I'm still their relief captain,
13 but the boat is not going anywhere anyway.

14 Q. It also mentions you're the relief captain
15 of the S/Y Necker Belle. And it says that
16 that boat is 105 foot CMN custom carbon
17 fiber catamaran. What does CMN stand for?

18 A. Chanteau something -- it's a french
19 shipyard. Long story short, this boat used
20 to belong to Sir Richard Branson, and I've
21 done a number of engineering projects on it
22 previously. They offered to hire me as a
23 full-time captain and I actually declined.

24 The captain who was onboard asked

↑

46

1 if I would step on as relief while he was on
2 vacation and I agreed. I've had a couple of
3 inquiries, again, from them since then and

4 had to decline because of the Pandemic,
5 again, I just haven't been able to travel to
6 them.

7 That boat was built as a
8 performance catamaran. It was built to go
9 fast; hence, why it's all built from carbon
10 fiber. Unfortunately, when Richard bought
11 it he decided to also make it more of a
12 luxury yacht, put a lot of weight on it and
13 now it does nothing very well.

14 It's bit like having a Ferrari and
15 putting a bunch of cinderblocks in the
16 trunk.

17 Q. Where was that boat located when you worked
18 on it?

19 A. That was in Florida.

20 Q. What were the conditions when you were
21 sailing that boat?

22 A. Pretty flat, really. We didn't do a whole
23 lot of sailing on that boat while I was on
24 it as the relief captain because a lot of

↑

47

1 what we were doing was refit at that time.
2 It was in the off-season. It just had a new

3 buyer. So we were fitting, we were
4 rebuilding engines, generators, interior,
5 etcetera, and there were various sea trials
6 that needed to occur for that. We weren't
7 out chartering or cruising.

8 Q. I'm going to come down, we've got the job as
9 the service manager at Parts & Power
10 Limited, that's the one we talked about.

11 Was there anything that you did in
12 that job that was related to the operation
13 or sailing of catamarans or seafaring
14 skills?

15 A. In terms of seafaring, no.

16 Q. Were you involved with any kind of, at that
17 point professionally navigation?

18 A. No, not in that role.

19 Q. SAR Tech, Virgin Islands Search and Rescue.
20 That's January 2012 to present. Is that a
21 part-time position?

22 A. It's a volunteer position.

23 Q. And what does that involve exactly?

24 A. I'm a search and rescue technician,

↑

1 basically, I drive the search and rescue

2 boat. I also have some medical
3 qualification to go with it. I try not to
4 be the medic.

5 We do the equivalent of what the
6 U.S. Coast Guard would do for you guys but
7 not in an enforcement role. We are strictly
8 search and rescue.

9 Here we have sort of like the booze
10 cruise capital of the world so we get quite
11 busy in season. We'll have in season five
12 or six calls a week. Normally right in the
13 middle of the night at the most inopportune
14 time. Normally alcohol induced, but
15 probably about 90 percent of the calls we do
16 are of a medical nature, not a lot of search
17 or rescue. It's go pick up Joe that fell
18 down the stairs or cut off his finger, had a
19 heart attack, had a seizure, an allergic
20 reaction.

21 I assume you're going to ask
22 questions about conditions so that's any
23 conditions. We have been out in any
24 conditions; to the point you can't see over

↑

1 the wave in front of you or you can't see
2 anything because it's pitch black, you know,
3 we go, that's it.

4 Q. Is it fair to assume you're using a
5 powerboat for that role?

6 A. That's correct. That is not a catamaran.

7 Q. Manager/Captain/Engineer of SY Ma Ha. Can
8 you tell us about that.

9 A. So that was a 57-foot catamaran, a 2009
10 boat. We ran that for charter here, which
11 is doing the resume in reverse. But when I
12 was at Moorings, I got headhunted by a
13 private yacht owner that said I want you to
14 come and run my boat. And this boat was
15 near brand new when I got it. It had one
16 other crew on it who had very quickly been
17 hired and fired. I got hired to run not
18 only the boat but the business as well.

19 So we did six passenger term
20 charters a week at a time, professional chef
21 onboard. And that was mainly around the
22 BVI. We did also do St. Martin, St. Barts.
23 We also would go up to the U.S. in the
24 summer so I would sail up to Cape Cod where



1 he had a house and leave it so I could go on
2 vacation.

3 The conditions on that varied,
4 again, obviously on charter in the BVI part
5 of the reason why it's such a great place to
6 chart is it's generally pretty benign.
7 Moving between islands to reposition for
8 charters not so much the case. I think, the
9 only time in my career that I have ever been
10 sea sick was actually going from the BVI to
11 St. Martin, so that can get pretty nasty.
12 Certainly up in Cape Cod you've got a full
13 tidal range up there and we were out on days
14 where it was so soupy that you actually
15 couldn't see the walkers on the bow from the
16 stern.

17 Q. I'm going to ask you, this is more a
18 question to get it clear on the written
19 record for people who may or may not be
20 fully aware of the geography. When you
21 mentioned going from the BVI to St. Martin,
22 where is the BVI in relation to St. Martin?

23 A. From closest point to closest point St.
24 Martin is 74 miles to the east of the BVI.

↑

51

1 Which is straight up wind and straight up
2 current.

3 Q. Is it a fair characterization to describe
4 the BVI as being between Puerto Rico and
5 St. Martin?

6 A. Yes, correct.

7 Q. Again, I'm just trying to kind of generate a
8 visual, a written picture of what the map
9 would look like if someone is reading it and
10 doesn't have that in front of them.

11 So Puerto Rico would be west of the
12 BVI on an east/west line and if you kept
13 going, more or less, you would hit
14 St. Martin, correct?

15 A. More or less, yes. It would go from west to
16 east, Puerto Rico, Spanish Virgin Islands,
17 which is part of Puerto Rico, depends how
18 you look at it, U.S. Virgin Island, the
19 British Virgin Islands, and then St. Martin,
20 Anguilla, St. Barts, are all sort of in one
21 clump. And at that point the Caribbean
22 turns much more southerly. You get to
23 Antigua first and then it goes much more

24 southerly.

↑

52

1 Q. Is it fair to describe as St. Martin, more
2 or less, the kind of northeastern corner if
3 you made the Caribbean a box?

4 A. It's pretty close, yes. I would say that
5 Antigua would make the very tip of that
6 corner, but St. Martin is definitely in the
7 corner, yes.

8 Q. So this was roughly a four year period of
9 time that you were the captain managing and
10 acting as captain on this charter/private
11 yacht, correct?

12 A. Correct, yes.

13 Q. During that time, did you ever sail that
14 private yacht along the course that Mr.
15 Andersson took during this --

16 A. No.

17 Q. -- his voyage from Aruba to?

18 A. No.

19 Q. Okay. Have you done that crossing, have you
20 sailed from Aruba and ended up at the
21 northern or northeastern part of the
22 Caribbean?

23 A. From Aruba, specifically no. I've just done
24 Grenada twice. That's actually not on the

↑

53

1 resume. I mentioned that I started out, or
2 I'm in the process of starting up a yacht
3 management firm. Just by happenstance come
4 last fall, I got a call from a yacht owner
5 who said my captains has Covid, there's two
6 hurricanes heading towards the boat and I
7 don't have insurance to be this far north,
8 what do I do?

9 I ended up picking the boat on
10 very, very short notice. It was a good way
11 get off the rock for the first time after
12 Covid and rip the band-aid off. But, yes, I
13 made a rush down there on a 60-foot sailing
14 catamaran. Put the boat to bed for the
15 summer. Needless to say, that captain got
16 fired.

17 I later then was asked to manage
18 the boat, hire new crew. So I went down to
19 bring it back up and orient the new crew.

20 Q. Now, prior to that you were a captain for
21 The Moorings for, it looks like about a

22 year, is that correct, less than a year?

23 A. Less than a year, yes. That was very much

24 so -- long story short, I came to the BVI to

↑

54

1 do my dive master with my girlfriend at the

2 time. We had just finished the

3 Mediterranean season. We still thought we

4 were going to go and work on big super

5 yachts and we were waiting to go to the

6 Lauderdale show. We just said let's put out

7 the resumes where we can.

8 We got down here, we got hired up

9 by Festiva, which you see on there. They

10 were offering cabin charters, so if you

11 don't book the whole boat you just book a

12 cabin on 44-foot sailing catamarans, which

13 is a really terrible thing to sell to

14 people. We did three charters with them and

15 then the Moorings hired us. In that time,

16 we did 21 charters from January to June, all

17 sort of five to seven days. And that pace

18 is just not sustainable. It's pretty quick

19 to burnout so we were quite happy to get on

20 to a private boat.

21 When I say private boat, I do want
22 to be specific on that because I'm dealing
23 with that with the government here now.
24 Private, recreational, commercial, all those

55

1 words get mixed in, so this yacht was
2 privately owned when we talk about Ma Ha,
3 but it was operating commercially. So
4 paying passengers commercial operation.

5 Q. Right. It was owned by an individual who
6 paid for the expense of the boat, or hoped
7 to by having a charter operation, correct?

8 A. The LLC had an individual beneficial owner,
9 yes.

10 Q. Okay. Festiva and The Moorings are similar
11 organizations, correct, except The Moorings
12 has a different structure of the kind of
13 vacation they offer?

14 A. They have a different business model. One
15 of the things I will add to that just to put
16 it in a little more context. The vessel I
17 was responsible for, the 46-foot catamaran,
18 however in between charters we also did a
19 number of things like all of their photo

20 shoots which meant that actually we probably
21 took out every vessel, every type of vessel
22 that was in their fleet at some point. They
23 would have gone up to sort of 55-foot. I
24 think at that time the largest they had a

↑

56

1 was a 62-foot catamaran. We sort of fill in
2 on other boats if there was a crew short,
3 etcetera. The same thing while I was on the
4 Ma Ha. At that time, I can remember doing a
5 week on 68-footer because the crew was not
6 available. If I put that on the resume we'd
7 be going on for days. But it helps to give
8 some context to a range of different
9 vessels.

10 Q. Is it fair to say that experience at both
11 Festiva and at The Moorings was confined in
12 the BVI area?

13 A. I think so. I think, we have may done a
14 couple of St. Martin trips with The
15 Moorings.

16 Q. Did you do any overnight passages?

17 A. Oh, yes, absolutely. The best time to do a
18 passage like the passage to St. Martin is at

19 night. The wind generally lays down a
20 little bit and the sea is a little bit
21 flatter.

22 Q. And specifically with The Moorings, so you
23 would go to St. Martin from the BVI and that
24 crossing would be, how long would that take,

↑

57

1 roughly?

2 A. Depends on the boat. On that boat probably,
3 if you put on the engine on about 16 hours.
4 If you try to sail it at least twice at
5 much. Just because it's straight up wind
6 and you can't sail in straight up wind.

7 It varies by the boat. If we look
8 at the Ma Ha, Ma Ha was a much, much faster
9 boat, she was probably 40 percent faster and
10 same with Necker Belle.

11 Q. I think we can say we're done with your
12 resume. I didn't ask because you're so
13 experienced in being a witness in this case
14 that I didn't think to go through the ground
15 rules. I know you're experienced with this.
16 Please don't hesitate if you need a break to
17 let me know.

18 MR. GOLDMAN: I was going to cut in
19 and say can we take a break, please.

20 MS. NIEMEYER: Of course.

21 (Short recess taken.)

22 Q. I'm going to come back now and we're going
23 to, a couple of things. There's one thing I
24 want to look at before we get into actually

↑

58

1 talking about the statements that you
2 created.

3 You did say that your observations
4 were part of your assessment overall, right?

5 A. Correct.

6 Q. I wanted to just, first of all, I realized
7 we have some photographs and I want to take
8 a look at those with you for a moment. Let
9 me share the screen here.

10 Mr. Ball, I'm showing you one of a
11 set of 24 photographs. It looks like you
12 can see the top part that shows how many
13 pages as well the picture, correct?

14 A. Correct.

15 Q. So this is page 1 of that set and it's Bates
16 numbered ABB000363. And I just wanted to

17 ask if you could let me know, it was
18 produced as part of a production with your
19 initials on it. Did you take that
20 photograph?

21 A. I believe so.

22 Q. Is this then the vessel Melody on the
23 breakwater where it's photographed?

24 A. Correct.

↑

59

1 Q. Do you have any recollection of seeing this
2 that breakwater at another tide point? Do
3 you know what tide that is?

4 A. No. But it remained above water for the
5 entire time I was there. Now, it's
6 possible -- well, I'm going to speak to
7 spring tide and leach tide because tides go
8 through ranges where one week you'll have a
9 very high range in tide where it goes very
10 low very high and the next week that range
11 will be a lot less.

12 I can't speak to what the range was
13 when I was there, but certainly it was only
14 a few days after the incident so it wouldn't
15 have been massively different. I did not

16 see it submerged at any point.

17 Q. Okay.

18 A. The other thing on that, while I was there,
19 the highest point on that was probably at
20 least a foot and a half, two feet above the
21 water. And the tidal range in the Caribbean
22 really isn't much, probably not that much.
23 I don't know what the tidal range for that
24 specific port is, but certainly if I looked

↑

60

1 down here right now we would probably get a
2 foot of tide and that's it.

3 Q. I just want to go through, and I'm going to
4 do this somewhat quickly and if you want me
5 to stop at any particular picture, let me
6 now, but you want you to tell me after we've
7 gone through this grouping is just to
8 confirm that these are photos you took while
9 you were there and that's what you saw at
10 the time.

11 Do you know whose boat that was?

12 A. No. In shore of this breakwater there's a
13 lagoon. Basically on the beach you have all
14 the hotels, resorts, but there are a number

15 of fishing boats, water sports boats, tour
16 boats, etcetera, that are sort of hanging
17 out in that lagoon. It was a fairly high
18 traffic area while I was there.

19 MR. GOLDMAN: Can I cut in for one
20 moment.

21 MS. NIEMEYER: Sure.

22 MR. GOLDMAN: Just a procedural
23 request. Can we be sure to read the Bates
24 number as we switch from photo to photo so

↑

61

1 we can find it later.

2 MS. NIEMEYER: Yes.

3 MR. GOLDMAN: You did on the first
4 one.

5 MS. NIEMEYER: Where I asked about
6 the boat was, I think, it was the number
7 ending in 365. Michael, so you know, this
8 was a grouping which is from Bates 363 to --
9 let me see, I'm sorry, I have this written
10 down -- 363 to 386 is what I'm scrolling
11 through. When I provide it to the court
12 reporter I will provide that grouping as the
13 exhibit.

14 Let's mark this as 36. Exhibit 36
15 will be Bates range 363 to 386 with the
16 prefix letters AB000 on them.

17 (Exhibit 36 marked
18 for identification.)

19 Q. We are going to kind of scroll through.

20 Mr. Ball, AB000385 within that
21 exhibit, it looks like it's kind of dark,
22 and it shows the ship behind the boat. Was
23 the shipping channel fairly close to where
24 the boat was?

↑

62

1 A. I think that probably depends on your
2 definition of close. That's probably at
3 least a quarter mile that you can see
4 between the ship and vessel in that photo.

5 Q. Do you recall about what time of day that
6 was when you took that photo?

7 A. I imagine that may have actually been the
8 same time of day. It may be just a passing
9 cloud. I don't know. I was certainly there
10 for more than, I was there overnight so I
11 may have may have gotten various photos
12 throughout the day because I didn't leave

13 the area. I don't know. My best guess is
14 same time of day.

15 Q. Were the photos you provided produced
16 sequentially to how they would have been
17 taken?

18 A. Yes, the file numbers would have been
19 generated by whatever I took it with either
20 a camera or phone so they should be
21 sequential. To be honest, there may also be
22 metadata in the photo file itself that will
23 say things like what camera it was taken
24 with, what time it was taken, etcetera.

↑

63

1 Q. It appears what I have is PDF which were
2 Bates labeled. That's a little different.
3 The next one, this last page this is 24 of
4 24 of this grouping, I see a photograph with
5 a business card. Is that your fingers in
6 that picture?

7 A. Yes, that's my fingers.

8 Q. And your computer screen in front of us?

9 A. No, that's not my computer screen. That's a
10 menu on the table at the restaurant where we
11 took Mr. Andersson's statement. And that

12 handwriting in the back you will match,
13 that's part of the copy of the statement
14 that you have.

15 Q. You would have taken this at the time while
16 you were sitting with Mr. Andersson
17 interview him, correct?

18 A. Yes. If I were to make a guess as to why I
19 took this photo at that time I probably got
20 the card from him.

21 Q. Does this refresh your recollection at all
22 about the order of when you spoke with him
23 versus when you saw the boat?

24 A. Not particularly. But if these are in order

↑

64

1 and we get to the one where I am on board
2 later, then yes, absolutely.

3 Q. I'm going to go to another grouping of
4 photos. We are going to stop that one and
5 start the next.

6 (Pause)

7 Q. This grouping has the Bates numbers AB000353
8 to 362. This is actually prior to the group
9 you looked at before, just to be clear, in
10 the Bates numbering. But it's not clear to

11 me whether that's going to be the numbers
12 that were made by your camera, that's the
13 numbers that were made on a PDF to produce
14 them.

15 A. I can certainly check. I'm happy to do
16 that.

17 MS. NIEMEYER: We will call this
18 Exhibit 37.

19 (Exhibit 37 marked
20 for identification.)

21 Q. Exhibit 37 is 353 to 362.

22 Can you tell us what this is that
23 we're looking at right now?

24 MR. GOLDMAN: Can I jump in for a

↑

65

1 moment?

2 MS. NIEMEYER: Yes.

3 MR. GOLDMAN: Looking at the files,
4 and I saved them as a PDF in sequence of
5 their file name, which to my eye does not
6 appear to contain time or date data. But if
7 you'd like, I'm happy to produce these in
8 that format so you can see.

9 MS. NIEMEYER: Okay. What I want

10 to know is just clarify the sequence of the
11 timing of it.

12 Q. Right now is what is important, let's just
13 get a picture in our head. What is this we
14 are looking at?

15 A. This is the cockpit of Melody where she's
16 stranded.

17 Q. For land lovers the port is the left side of
18 the boat, correct?

19 A. Correct. And the stern is the back.

20 Q. Would you say it's fair to say that you're
21 probably standing at about the middle of
22 that cockpit area looking towards the left
23 side of the boat?

24 A. Based on the frame probably, I probably had

↑

66

1 my back to what we would call the combing,
2 where something like that seat would be on
3 the right hand side. Overall, that's pretty
4 close to the middle, but in terms of the
5 cockpit that would be as far to the right as
6 could you get.

7 These photos are often hard to get
8 based on the angle of the camera so you got

9 to sort of put the camera above your head
10 and stand back and take the photo.

11 Q. Just so that it's clear, we see that there's
12 canvas around and on top. Can you describe
13 what it looked like while you were there in
14 that area?

15 A. In what sense?

16 Q. Was the entire cabin area enclosed like
17 this?

18 A. Yes. Basically, this photo doesn't really
19 show the sea state very well. But they had
20 waves breaking over the starboard end, the
21 back right corner of the boat. And they had
22 some, well, some guys that were performing
23 security onboard in the salon who had been
24 sleeping on the floor because the cabins

↑

67

1 were a wash. In one case on the corner they
2 sort of rigged up a bed sheet or something
3 to stop that water from coming in. They
4 used the canvas enclosing the cockpit as
5 well as adding to it just to try and keep
6 the water out.

7 Q. Is it fair to say that on that starboard

8 side there was protection from waves
9 splashing in on things that were in the boat
10 at that side of the boat, at least once the
11 security guards were there?

12 A. There was certainly an effort made, yes. I
13 wouldn't say it was weather tight but it was
14 the best they could do.

15 Q. And if you were to turn around, would you
16 see a steering wheel and seat and something
17 similar to what you see on the left side of
18 the boat on the right or the starboard side
19 of the boat?

20 A. I believe so. I believe there should be
21 some photos of that, though.

22 Q. Would it have been your typical practice to
23 take pictures of the starboard and the port
24 side areas of the boat when you were

↑

68

1 surveying the boat like this?

2 A. Generally speaking, yes.

3 Q. I'm going to go through like we did before
4 and just crews through here, and let me know
5 that, let's confirm that unless we're told
6 otherwise these are the pictures you took or

7 part of them and we'll go from there.

8 There's 10 of these.

9 What is this?

10 A. This is the mid-shift of the cockpit looking
11 off the back of the boat. That's one of the
12 main winches. Basically that canvas that
13 you see if that wasn't there you would be
14 looking almost straight off the back of the
15 boat if you were in line with that wind.

16 Q. That canvas is protecting the back part of
17 the boat from the elements at this point
18 while it's sitting there?

19 A. Correct. And you can see they've wedged
20 some cushions in the gap just to try and
21 help. What you see there in the foreground
22 as well that wooden frame is part of one of
23 the bunks in one of the forward cabins. It
24 just gives a little bit of insight on how

↑

69

1 wet the cabins were.

2 Q. Is that the starboard corner or back right
3 corner?

4 A. It is indeed. Like I said before, good
5 effort, but a bed sheet isn't going to stop

6 a whole lot of water. It's the best you can
7 do. It will stop some spraying. There's
8 quite a sea rolling across that stern as
9 well.

10 Q. This --

11 A. It looks like a security man.

12 Q. Right. Inside the cabin, correct?

13 A. Correct. And that's looking forward.

14 Q. Inside isn't necessarily relevant. This
15 appears to be the galley; is that correct?

16 A. That's correct. That's the galley on the
17 starboard forward the right front side of
18 what we would call the salon. So the area
19 in the middle between the two holes raised
20 up.

21 Q. This area?

22 A. That's the port side of the same thing. The
23 left side where sort of the couch is and the
24 table.

↑

70

1 Q. The snacks being consumed by the security
2 guards probably, correct?

3 A. Liquid and solid it appears.

4 Q. This here, what do you see, I see a man

5 inside and a man outside. But this area to
6 the back is that, what is that?

7 A. That's part of the galley on the port side
8 of the salon. So left back by the salon.
9 Looks like he's got sort of a wet bar there.
10 Looks like an ice maker under the counter.

11 Q. The galley again with better light?

12 A. Yes.

13 Q. And this is --

14 A. Actually, that gives some good context, we
15 were talking about the waterline on the
16 breakwater. If you look at that rock in the
17 foreground you can sort of see the growth on
18 it which would indicate where sort of the
19 mean high tide would be.

20 Then behind that, just to give some
21 idea as to the size that's a door that is
22 sitting on top of the rocks. That rock
23 behind the door is probably two to
24 three feet tall based on the tide at the

↑

71

1 time of the photo. Which actually might be
2 good thing, you know, we know what time the
3 photo was taken so we could look at the tide

4 tables for that time.

5 Q. Okay. Then this same thing -- okay. I just
6 want to go to the next one. We've got three
7 groupings of photos that were produced to us
8 that seem to be the ones we were told you
9 took. I'm going to stop sharing that
10 grouping. We are going to share again.

11 (Pause)

12 MR. GOLDMAN: Michelle, will you be
13 marking this as 38?

14 MS. NIEMEYER: The next grouping,
15 yes.

16 Q. The next grouping is Bates AB000291 to 351.
17 This appears to be either sunrise or sunset.
18 I know these numbers precede the numbers of
19 the others, and one thing I wasn't certain
20 of was, it was my understanding that you got
21 delayed and had to get there somewhat late
22 and saw the boat the day after you
23 originally planned. Does that mean this
24 would have been morning photos?

↑

72

1 A. I do remember we started in the morning and
2 the water was bloody cold.

3 Q. Presumably, looking left from the south
4 facing shore east would be where the light
5 is coming from, that would be the morning,
6 correct?

7 A. Correct, should be.

8 (Exhibit 38 marked
9 for identification.)

10 Q. As we go through here, again, just tell me
11 if anything pops out that you feel like you
12 want to say something was relevant to your
13 opinion. Otherwise, I just want to get them
14 itemized and, you know, to clarify for sure,
15 you're the one that took these pictures and
16 these are part of what you, this experience
17 was part of what you considered.

18 The sailboat in the background is
19 the Melody, correct?

20 A. Correct.

21 Q. For instance, in this one here, 294?

22 A. That's Melody, yes. Basically, the hotel I
23 stayed in was at one end of the beach, and
24 as walked there, I just kept snapping

↑

1 photos.

2 Q. Beautiful walk to work that day.

3 It looks like you were kind of back
4 at the place where you were in the beginning
5 of those other photos, correct?

6 A. Correct.

7 Q. A little different angle. Is this as you
8 were heading in to look at the boat?

9 A. It may have just been, more than likely, I
10 just hit the zoom function on it. So that
11 lagoon through in between the shore and what
12 we're calling the breakwater, which I'll
13 come to that in a moment, it sort of varied
14 between two or three feet deep and let's
15 call it five feet deep, at one point we were
16 up to our neck. We did manage to, pretty
17 much, wade or walk most of the way across.
18 I don't think I was ever actually off my
19 feet per se.

20 Q. If this was taken after that, I would assume
21 the other was a Zoom photo; otherwise, you
22 would have been there.

23 That's the dingy from the boat?

24 A. That's the dingy from the boat, yes. I

↑

1 imagine they had either left it there for
2 the security guards or -- I don't know. But
3 it's obviously on the opposite side
4 breakwater. It's possible it got washed
5 across. It's also possible they just moved
6 it to preserve it.

7 But if I was a security guard, I
8 wouldn't want to be left alone on a boat
9 that's potentially breaking apart without a
10 means of escape.

11 Q. You can see here places where it looks like
12 rocks came through the hull, correct?

13 A. Yes.

14 Q. This is actually what I wanted to show. Is
15 this the starboard side of the boat?

16 A. It is, so we're looking from the bow back
17 here. A couple of frames after this is
18 where the waves knocked me off my feet.

19 Q. So you're looking from the front of the boat
20 to the back of the boat?

21 A. Correct.

22 Q. And this is the starboard or right side of
23 the boat from about, what, the mid-line and
24 a little forward of it?

1 A. No, this is probably from the bow back just
2 based on the logo there. If you go back a
3 couple of frames it will probably show us
4 that that logo is on the bowels of the boat
5 rather than the mid-shift.

6 Q. Okay.

7 A. You can sort of see in this frame, which is
8 322, where the wave is hitting the stern but
9 you can't actually see where it's hitting,
10 if that makes sense.

11 Q. Right. This is the photo I wanted to point
12 out, 322 was the photo where you could see
13 that the wave is breaking on the stern. Was
14 that kind of the typical wave action where
15 the boat was situated that the waves would
16 break on the stern and flash like that?

17 A. It was certainly getting regularly hit with
18 waves like this. When I took these photos,
19 you can see there's a sequence of photos
20 here to show the waves. What I try and do
21 is wait for the larger sets, because waves
22 come in varied frequency. I wait for the
23 larger set so do a stream like this, because
24 waves are actually incredibly difficult to

↑

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1 photograph to give them sort of contact to
2 their destructive force.

3 I knew after I looked at this boat
4 that I would be recommending to underwriters
5 that it was a constructed total loss. But
6 Obviously if that was going to come into
7 question, I wanted to be able to demonstrate
8 that it simply would have broken up there on
9 the reef before we could get any real aid to
10 it.

11 Q. This particular shot, which is number
12 AB000322, I want to flag that for the
13 record, demonstrates that the action of the
14 water as the wave is breaking is essentially
15 hitting at the stern in the right side of
16 the boat and flashing up, correct?

17 A. Correct.

18 Q. Is that a close-up of similar, you said you
19 did a series?

20 A. That's the wave as it sort of worked its way
21 along the starboard top side and came closer
22 to me. If there was a wave I didn't want to
23 be underwater.

24 Q. That's 323. I'm going to kind of cruise

77

1 through these ones.

2 The one that has 334, what is that?

3 A. Sticking up?

4 Q. Yes.

5 A. That's called a daggerboard. Most sailing
6 boats are built with keels, big fins on the
7 bottom of the boat that keep the boat going
8 straight, because, of course, the wind is a
9 sideward force that is applied to the
10 rigging, and the sails work of the wing
11 pushes it forward but it needs a fin to keep
12 it going straight so it just doesn't float
13 sideways.

14 In this case this boat has
15 daggerboards so it's like a keel but it
16 pulls up so you can go into shallower water.
17 And it also, on some boats it gives you the
18 ability to put the boat on the shore, let
19 the tide go out, and then you can sort of
20 clean the bottom from under the boat.

21 Q. Does the boat having daggerboards like this
22 provide a higher pointing ability, and I'm

23 going to define that as the ability to sail
24 closer to the wind than you would be able to

↑

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1 otherwise without the daggerboards?

2 A. No, not in any real effectual way, no.

3 There's a number of arguments that will be
4 made amongst sailors as to what is the most
5 effective design of a boat to sail close to
6 the wind.

7 The example I would give is, if we
8 look at the high performance race boats that
9 are out there now most of them do not have
10 daggerboards.

11 Q. Does the daggerboard provide any better
12 level of stability in rough conditions?

13 A. Not really. It would give you a benefit in
14 terms of drag which is the real sort of
15 benefit that I would see. In situations
16 where, for instance, you're sailing downwind
17 and you don't need the boat to track
18 straight because it's already sailing in the
19 direction of the force of the wind, you
20 could pull the daggerboards up so they are
21 not slowing you down creating drag.

22 There are some finer points in
23 terms of the arguments of sailing faster.
24 We're talking about a quarter to a half a

↑

79

1 knot here. And that is hugely dependent on
2 conditions. The benefits of having a
3 daggerboard up versus down when you're
4 sailing on the beam or sailing upwind, you
5 know, we could certainly argue in a flat
6 sea, for instance, or in ideal conditions
7 with the ideal boat. But to apply those
8 things universally to sort of all boats and
9 all conditions is where it all falls apart.
10 And this is sort of where Internet forums
11 and armchair sailors get involved. But
12 certainly there's no real advantage there on
13 a boat like this.

14 To give you a little background on
15 the design of this boat is what we could
16 call a performance cruiser. It's designed
17 as a comfortable cruising boat with a number
18 of features that make it faster. Some of
19 those features are more sales tactics than
20 they are effective. They will certainly be

21 effective but to a very, very small degree
22 that often doesn't justify their cost.

23 The daggerboards were one of
24 cataneus ways of making the boat a bit more

↑

80

1 sporty. I won't say they didn't serve a
2 benefit, they just don't serve a benefit to
3 really set it that far apart from other
4 cruising boats.

5 Q. Have you had experience personally
6 captaining vessels with daggerboards?

7 A. Yes. Necker Belle had daggerboards. I
8 actually brought one of these same boats
9 back, I believe, a couple of years ago. It
10 had been stolen in Trinidad and abandoned in
11 the BVI. So we got asked if we would move
12 it around for the police.

13 Q. Did you handle that boat in heavy
14 conditions?

15 A. No.

16 Q. I'm going to continue scrolling. Tell me if
17 there's anything that strikes you from the
18 perspective of your report.

19 Is this or was this the nav

20 station?

21 A. No, that was the interior of one of the
22 cabins. In the background there you can see
23 the sort of lattice, if I'm right, that was
24 the starboard forward cabin. Now, I would

↑

81

1 have to look at some photos of one of these
2 boats in full condition to determine that.
3 I made that based on the tapered look of the
4 lattice there and also the curvature of the
5 hull on the outboard side there on the right
6 hand side of the photo.

7 Q. I'm just going to finish scrolling through.
8 There's two more pictures here. From the
9 pictures that we looked at it, did you see a
10 picture of the nav station? I can back up,
11 if you'd like.

12 A. You can if you'd like. I don't recall
13 seeing one. It may be in the background of
14 some of the salon photos. But perhaps there
15 isn't.

16 Q. Would it be your standard practice to take a
17 photo of the nav station when you're
18 inspecting a boat for a marine survey?

19 A. Generally speaking, yes. In a damage claim
20 like this, at this time, I would have been
21 most focused on sort of the high value
22 damages just anticipating that we are going
23 to recommend that the boat is a constructive
24 total loss. But not in anticipation, of

↑

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1 course, of any dispute in coverage or
2 anything like that.

3 I will say if I didn't have a photo
4 of the nav station I am quite happy to admit
5 that I should had a photo of the nav
6 station. That would be in my standard
7 practice. It's entirely possible I didn't
8 get one here. It's early in the morning,
9 we're soaking wet, and the boat is a wash.

10 Q. Is it fair to say that, did you see anywhere
11 in the photos that we looked at a photograph
12 of the starboard steering station in the
13 back of the boat?

14 A. No. I don't want to say no outright. No, I
15 don't recall seeing one. And I make that on
16 the basis that we know we saw the sheet
17 there blocking the view in that photo. We

18 also saw the starboard side deck which may
19 have looked back to the nav station. That
20 definitely would have been an area that I
21 would have been careful about climbing
22 around because, of course, that's where all
23 the waves were breaking.

24 Q. That's the starboard side, correct?

↑

83

1 A. Where that drop of water is.

2 Q. Is that covered there?

3 A. Yes, there's a cover there. And then, I
4 think, what you can see sticking up above
5 that drop of water is the top of the helm
6 station with the compass on it.

7 Q. Oh, okay. I guess, I need to ask you, in
8 this contraption that was created to protect
9 the interior from the water was the nav
10 station outside of it?

11 A. Yes, it would have been. Not the nav
12 station the starboard helm would have been
13 outside of it.

14 Q. Is it fair to describe the starboard helm as
15 being exposed to the elements when you saw
16 the boat?

17 A. Absolutely.

18 Q. Okay. I just want to make sure we
19 understand what the status was at that point
20 in time.

21 Do you remember taking other
22 photographs that were not included in
23 what you just saw?

24 A. No. My standard practice, in this case I

↑

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1 actually used a separate camera, a
2 waterproof camera because I had to wade out.
3 So my standard practice is to dump all of
4 those photos when I write my report into a
5 folder on our office server because
6 otherwise I will mix them all up. After a
7 few weeks it's hard to tell which boat is
8 which. What we have provided is that folder
9 and everything in it. I can't see how I
10 would have taken other photos, or I
11 certainly wouldn't delete things without
12 putting them on the server. This should be
13 all inclusive.

14 Q. Okay. Good. We can stop with those. Let
15 me ask you a general question.

16 I know you had a number of courses

17 and things that we already talked about.

18 What would you say is the basis for your

19 expertise on seaworthiness?

20 A. Probably the most of the yacht master

21 training and experience. In terms of -- I'm

22 trying to think of the right way to word

23 this. In terms of as a seafarer looking at

24 it, in terms of looking at it from an

↑

85

1 investigative standpoint that again would be

2 the sort of experience and mentorship along

3 with the various sort of small SPD courses

4 that I have done throughout my time with

5 Caribbean Marine Surveyors.

6 Q. Do you speak any foreign languages?

7 A. Not really. I can speak survival French,

8 hello, good-bye, thank you, where's the

9 bathroom. And I can get as far in Spanish

10 as asking for a beer, but that's it.

11 Q. Do you have any people that you spend time

12 with, significant time with, who are good

13 English speakers but not native English

14 speakers?

15 A. Absolutely. 70 percent of our population
16 here.

17 Q. So in that context are you aware of
18 situations when those people act like they
19 understand but may not quite get it?

20 A. Absolutely.

21 Q. Have you had experience where they may use a
22 word differently than you would use it?

23 A. Yes.

24 Q. Did you notice when you met Mr. Andersson

↑

86

1 and spent time with him any accent?

2 A. Oh, absolutely. I couldn't tell you what
3 that accent was. I could tell you it was
4 European, I think.

5 Q. Is it fair to say you didn't have any
6 conversation with him about where he came
7 from or anything like that?

8 A. I don't believe so, no. In these events, I
9 sort of try and keep it strictly business.

10 Q. What was your impression of his, I don't
11 want to say mental being in a psychological
12 sense, how did he seem when you met with
13 him?

14 A. He seemed relatively, what I would call,
15 calm, cool and collected. He didn't seem,
16 you know, I've met a lot of people in these
17 instances, I've had people threaten to kill
18 me when I've gone out to investigate these
19 things. I've met people that are quite
20 upset. And that certainly wasn't him. He
21 was obviously not happy about his loss. But
22 he didn't seem lost, he didn't seem unclear
23 on sort of what he was saying. He didn't
24 seem overly emotional or out of control of

↑

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1 his, I don't know what the word is,
2 faculties. I don't know.
3 Q. Would it be fair to say, you wouldn't really
4 know how it was going inside of him, how he
5 was really feeling?
6 A. Absolutely. He obviously had just been
7 through a traumatic experience so I will
8 absolutely acknowledge that.
9 Q. Just to put it in context, as I recall, I'm
10 going to ask for your confirmation. You
11 were there four days before Christmas,
12 right?

13 A. Correct. You have the date, I don't know if
14 it was exactly four days. I remember it
15 being a few days before Christmas. I
16 remember being concerned about Christmas.

17 Q. About not getting home.

18 A. It's 10 times worse now with Covid.

19 Q. I'm sure.

20 What would you consider the best
21 evidence of the course of a boat that's on a
22 voyage like this one, a multi-day voyage
23 that this boat took?

24 A. Ideally the ship's log or a satellite

↑

88

1 tracker. As an example, the yachts that I
2 manage, and it's somewhat common practice
3 here, we send a lot of boats down to Grenada
4 for hurricane season.

5 Most of the time whenever we send a
6 boat on a longer passage we will put a
7 satellite tracker on it, something like a
8 spotter tracker, and it just sort of pings
9 every half hour, every hour. That way,
10 there's normally an SOS button on that piece
11 of equipment as well.

12 If you end up in a bad situation
13 you might be in the water and you can't talk
14 on a satellite phone, VHS doesn't do you
15 much good unless there's somebody within
16 25 miles of you. It's a very quick panic
17 button that also reports your position.
18 It's not something that I would necessarily
19 say, you know, everybody needs to have one.
20 It's a standard. But it's certainly
21 something that is common practice here.
22 Q. When you say a ship's log, how would you?
23 A. A paper logbook. That's standard seamanship
24 when you're offshore. I know you're going

↑

89

1 to come to electronic navigation in a
2 moment.
3 One of the reasons that we have a
4 logbook is for when all of that fails. Now
5 in this case, the logbook may well have been
6 wet anyway if there was one. There's always
7 that question of, right, what happens if my
8 alternator fails and my battery is not
9 charged; or I blow a fuse and I don't have
10 that spare fuse; or if I get hit by

11 lightning. That's a pretty common one.

12 Then there's a case of, how do I
13 know where I am? Well, you have a paper
14 chart where you mark down where you were an
15 hour ago when you made your log entry. It's
16 pretty easy to discern because you know in
17 your log what your course is, what your
18 leeway was, what your current was, what the
19 wind was, what your speed was, you can pluck
20 your position to a reasonable degree of
21 accuracy. I would never do an offshore
22 passage without a paper chart and a log.

23 Q. Let me just ask you a question related to
24 that. Let's assume you're making, you

↑

90

1 plotted your course on your chart, your
2 paper chart, and you're out there in the
3 ocean in your boat. This is probably going
4 to be read by people who have never done
5 this and this is why I'm going into this
6 detail.

7 The chart, you would plot that
8 course by using a protractor to measure the
9 angles, correct, and you figure out how many

10 degrees to go to a certain island or is to a
11 certain, then you would follow that. But
12 while that's happening separate from what's
13 on a piece of paper, real conditions involve
14 things like currents and waves and
15 fluctuations in the wind and all that kind
16 of thing, right?

17 A. What your referring to is passage planning
18 in terms of plotting the course that you're
19 going to take. What I'm referring to is
20 keeping a record of where you traveled.

21 Q. Here's my question to you. How do you know,
22 you've got your paper chart and your paper
23 chart has your plotted course, but how do
24 you know exactly where to put the dot on the

↑

91

1 chart at a time when?

2 A. So there's a number of methods for this.
3 Effectively, in one sense you would plot
4 ahead based on something like a tidal stream
5 atlas or almanac that would tell you what
6 the current is going to do. You would
7 measure the leeway off your stern which
8 basically the term is Australian sailing.

9 And all of that is an estimation. And
10 periodically, in the old days you would back
11 that up with a sighting on a sexton. People
12 have GPS that works, they will confirm with
13 the GPS so they don't have to take those
14 sites.

15 On a passage what we would do
16 normally right now is every hour, or at the
17 very least every watch change, which would
18 be every three or four hours, you would make
19 a log entry which would have your position,
20 your course over ground, your speed over
21 ground, essentially your speed through the
22 water, or at least a notation of what the
23 current is doing. And the reason I pile
24 those things together is because the

↑

92

1 difference of your speed over ground versus
2 your speed through the water is defined by
3 the current.

4 You'll note your point of sail if
5 you're using engines what RPM they are at
6 because that's another definition of speed.
7 Because you sort of do this with the intent

8 that any one of those numbers might be
9 wrong, or you might misread it, etcetera.
10 So you're going to determine that's wrong by
11 looking back through this logbook and going
12 that one number doesn't make sense but
13 everything else adds up.

14 In terms of going back to the
15 hypothetical I get hit by lightning. If I
16 get hit by lightning make sure the boat is
17 safe, get my bearings about me, and then I'm
18 going to look at that logbook when none of
19 my electronics is looking and go, where was
20 I, how long ago was that, where does that
21 put me now roughly.

22 Q. And so you would do that and then you would
23 do this along the course as you go along?

24 A. Yes.

↑

93

1 Q. That's one way to keep track.

2 Now, I'm going to ask you
3 realistically in your experience in dealing
4 with piloting vessels, being on vessels
5 where people were chartering vessels,
6 etcetera, how often is that really done?

7 A. In terms of inshore, never. You're going to
8 she 100 charter boats out behind me right
9 now. Nobody is keeping a log there. That's
10 because they are within visual range of
11 shore at all times, they know where they
12 are. If you're going offshore that is
13 absolute mandatory good seamanship right
14 there.

15 Q. And what's the basis of you're saying that?

16 A. Yacht master training, pretty much any
17 seamanship book that you look at. If you
18 have a look at Chapman Seamanship, any of
19 the OA literature, MCA literature, if you
20 look at commercial regulation, most
21 commercial regulation won't specifically
22 speak to how the log is kept or how things
23 are chartered, but they will speak to the
24 necessity to have the log and the charts.

↑

94

1 And coming back just because I want to
2 stitch it all together, I know you're going
3 to come back to it. In terms of electronic
4 navigation, even most jurisdictions for
5 commercial vessels electronic navigation is

6 only considered if it is a certified system
7 and there are two independent systems with
8 independent power supplies which isn't
9 something we find on recreation boats.
10 Obviously, that's a higher standard for
11 commercial use. But it gives an idea, if we
12 dumb that down we are still looking at a
13 level of redundancy here.

14 Q. We didn't see photographs of the helm
15 station, but do you have an understanding of
16 what the actual electronic configurations
17 were in this boat?

18 A. I've seen the report, yes. I've got a copy
19 of the prepurchase survey when Mr. Andersson
20 bought the boat. I also managed to find a
21 YouTube video which was a listing of the
22 boat before he bought it, which was quite
23 understanding in terms of watching the point
24 of sail and the weather conditions and the

↑

95

1 speed it was doing. I've got a copy of the
2 electronic guy's report, I can't remember
3 his name now, that interrogated the various
4 GPS unit.

5 Q. We had, with respect to the YouTube, we have
6 seen the other report obviously, but that
7 YouTube was that something you relied upon
8 in your expert opinion?

9 A. No, that's something that I've looked at
10 since just to clear up any doubts in my
11 mind.

12 Q. It wasn't relied upon when you created your
13 opinion?

14 A. No, it was not part of this report at all.

15 Q. Is it your understanding there were
16 redundant GPS systems on this boat?

17 A. Yes, there were, according to that report
18 and according to the prepurchase survey, I
19 believe, there were three systems. One was
20 positional only so there was no charting on
21 it. That was a (inaudible) system which is
22 pretty commonly, a little unit that gives
23 you lateral and long and a speed and course
24 over ground. Sometimes it will give you a

↑

96

1 heading if it's a hooked up to a compass
2 unit. And then there was a Garmin and a
3 Ring, I believe, onboard.

4 Q. Did you fire up either of those systems and
5 take a look at them to see if they worked?

6 A. I doubt there was any power on board when I
7 was on there. The engine rooms were awash
8 which means the battery banks would have
9 been awash.

10 Q. Do you know if they had separate power
11 supplies?

12 A. I do not. But it's not common on these
13 boats. It wasn't noted on the prepurchase
14 survey. To give it a separate power supply
15 you would need to have a separate fairly
16 large lead acid battery put somewhere in the
17 cabinetry or you would have to run wiring to
18 it and you have to have a separate charging
19 system. I would expect that to come up at
20 the very least on a prepurchase survey.

21 Just to be clear, that's not
22 something that I really ever see on boats of
23 this size. I'm not going to generalize it
24 to this boat, but just in my experience it

↑

97

1 is not something sort of people do.

2 Q. Are you aware of any kind of a requirement

3 by the policy to have a logbook or maintain
4 a log while you're on a crossing?

5 A. Not specifically, no. I'm not aware of any
6 wording that says anything about logbook.

7 Q. Is another way to maintain a record of the
8 track by saving the track as the vessel is
9 sailing along in the chart plotter?

10 A. There's certainly a way to maintain a record
11 as long as you have power to access it, yes.

12 Q. Is that a common way the track is maintained
13 in boats like this?

14 A. It is a way that people measure their track,
15 yes.

16 Q. If you as a surveyor are going on the boat
17 after the fact, is the GPS unit with the
18 track where you would look to have a record
19 of that track that you could look it up
20 right away?

21 A. It's not necessarily something we would rely
22 upon but it is something that would be
23 additionally useful to us for sure.

24 Q. Why would you not rely upon it?

↑

1 A. Because it's not always there.

2 Q. If it is there would that be the first thing
3 you would look at?

4 A. Yes, absolutely.

5 Q. At the time you were on the vessel you did
6 not remove the Garmin or the Ring Range GPS
7 track plotter units; is that correct?

8 A. Correct.

9 Q. Is there a reason you didn't?

10 A. We had weight to the boat and we didn't have
11 any tools. In normal course of business
12 what we would do is, once salvage is
13 appointed we would ask salvage to remove it
14 and retain it for us. Because, of course,
15 they are out there on boats in nice flat
16 surfaces. They might lift the whole yacht
17 first before they pull it off depending on
18 how the salvage was done.

19 Q. Did you do that, did you make any effort
20 after the physical inspection to remove the
21 GPS units from the vessel?

22 A. No. We asked Mr. Andersson for permission
23 to do so because I foresaw that as being the
24 next step with salvage. But underwriters

↑

1 made decision not to get involved in
2 salvage, or at least not to involve us in
3 salvage. Subsequently we never gave any
4 instruction on their behalf.

5 Q. The removal of the GPS would have been part
6 of salvage but it also would have been part
7 of your investigation; is that correct?

8 A. Correct.

9 Q. And if you could have all the tools that you
10 wanted to give your opinion here today it
11 would have been helpful to have a GPS track,
12 correct?

13 A. Oh, absolutely.

14 Q. I want to go on to the question about paper
15 charts. There were some references in your
16 opinions about paper charts.

17 Do you specifically recall having
18 any conversation with Mr. Andersson about
19 paper charts?

20 A. Specifically, no. Can I tell you where and
21 when, no. I seem to have a recollection of
22 it coming up either in his statements or his
23 documents or in a conversation, but I
24 couldn't tell you accurately enough to rely

1 upon that.

2 Q. Did you conduct any kind of search through
3 the hull of the boat to look for paper
4 charts?

5 A. No, we did not.

6 Q. Did you speak to anyone other than
7 Mr. Andersson who had been on the boat about
8 what charts might have been on the boat or
9 might not have been on the boat?

10 A. No, we did not.

11 Q. Where did you get the understanding that
12 there were no paper charts on the boat?

13 A. I believe, from Mr. Andersson.

14 Q. Did you write that down someplace?

15 A. If I did then you have it. Otherwise, no.
16 This is all two years old so it's getting a
17 little bit difficult to remember. But if
18 it's not in the documents that you have then
19 we haven't written it down.

20 Q. What does a chart cost?

21 A. Depends where and to what detail. But they
22 are not overly expensive. I mean, a whole
23 chart pack can be anywhere from \$100 to
24 \$500, and that will cover a fairly massive

↑

101

1 area.

2 Q. And particularly, there are discussions
3 about local charts, for instance, and
4 navigation guides, and I'm just going to ask
5 if we characterize, if you were to compare,
6 say, the income of the average guy driving
7 his little fishing boat around in the
8 southern part of the Dominican Republic to
9 the American yacht owning public, would a
10 chart be expensive?

11 A. To them, yes, absolutely.

12 Q. Would charts be something that would be
13 worthy of stealing off a grounded vessel if
14 they were just sitting there if they weren't
15 ruined?

16 A. Perhaps.

17 Q. So it's possible if there were charts on the
18 boat they could have been stolen, correct?

19 A. Oh, absolutely. I wasn't there the whole
20 time.

21 Q. Are you aware, were other things stolen from
22 the boat?

23 A. Not to my knowledge. I didn't think so.

24 Again, if I was aware of that I would have

102

1 noted it in the report. I don't recall any
2 question of theft. I recall that there was
3 security there. If I remember correctly, I
4 will do the same thing as you to answer the
5 question more correctly and that's just
6 consult my report. Then the security was
7 put onboard relatively quickly, I think.

8 Q. Okay. Now --

9 A. Not to say I haven't seen security steal
10 things in other cases.

11 Q. Okay. This isn't the place for a factual
12 discussion about why the security was there
13 but that it's own thing.

14 How many miles is the Dominican
15 Republic, the area where you were, Boca
16 Chica Dominican Republic from St. Martin?

17 A. Oh, boy. Estimation, maybe 250, 300. I'd
18 have to look at a chart to tell. St. Martin
19 to BVI is 75 miles, add another 15 one end
20 of the BVI to the other, add another about
21 75 to Puerto Rico and then on to the
22 Dominican.

23 Q. Is it fair to say it's a good distance?

24 A. Oh, yeah.

↑

103

1 Q. I'm going to just give an example. Is it
2 about as far as from Cape Cod to New York?

3 A. Perhaps. I have to look at a chart to be
4 honest. I haven't sailed up there in a long
5 time.

6 Q. But it's a long way?

7 A. Oh, yeah.

8 Q. I'm trying to give an example that would be
9 relevant to a judge in Massachusetts so
10 that's why I'm saying Cape Cod to New York.

11 A. I would consider it a passage. It is not
12 pilotage. In that aspect what I mean is,
13 pilotage is within an area you know, it's
14 relatively close to home, you can do it in
15 one trip, sort of a day trip. Whereas, a
16 passage is it's overnight, it's a long
17 distance. You have to do a little bit more
18 planning to make sure you can do it safely
19 and effectively.

20 Q. Is it fair to say that good seamanship would
21 involving having local charts where you plan

22 to be sailing?

23 A. Correct.

24 Q. Is it expected to have local charts hundreds

↑

104

1 of miles away from where you plan to be

2 sailing?

3 A. No.

4 Q. Do you have a boat?

5 A. Not anymore.

6 Q. Did you have a boat?

7 A. I was a part owner in Ma Ha, which is the

8 57-foot catamaran we were talking about.

9 Q. And I'm going to hold off on this one.

10 One of the comments you made in one

11 of your opinions, and I just want to get at

12 this in sort of isolation as a concept. You

13 mention that in your opinion the vessel, or

14 the voyage was, and I quote, "poorly planned

15 and executed." Is that in your mind

16 negligent?

17 A. I think that might be a good word to

18 describe it, to be honest. I know that's a

19 very specific term. I'm careful about just

20 outright saying yes. Ultimately, the way I

21 look at this, you know, he headed offshore,
22 some nasty weather came up on him very fast
23 which was effectively forecast. He took a
24 course which was near impossible to make in

↑

105

1 any vessel under sail let alone a catamaran.
2 Somebody got very sick and it ended rather
3 poorly. That to me would be negligent.

4 Q. We're going to go through the details of
5 your opinion. Some of the things you said I
6 want to get to the basis of where that
7 information came from, where those
8 understandings came from.

9 I'm going to ask you first before
10 we get to that, did you do any research
11 outside of your inspection of the vessel and
12 the documents that were provided by Mr.
13 Bailey or by the insurance company in coming
14 up with your report?

15 A. Depends what the report references. But I
16 know we would have provided everything that
17 we were aware of.

18 Let's be clear about which report
19 we're talking about. You should have

20 everything on every report.

21 Q. Let's talk about in general both reports.

22 When you were writing these things did

23 you --

24 A. Both reports, not the damage report,

↑

106

1 correct?

2 Q. Do you recall doing any outside research?

3 A. Not at that time, no. We might have pulled

4 up the weather, but I think we probably did

5 that in the effort to do the first report,

6 the damage report.

7 Q. And to the extent that you relied on the

8 work for the first report, you include that

9 because it forms part of the basis?

10 A. Right. So you have that, correct?

11 Q. Yes. I believe, I do.

12 Were there any books that you

13 consulted?

14 A. I don't believe so.

15 Q. Did you talk to anyone other than

16 Mr. Andersson?

17 A. Probably, Mr. Bailey. We would have

18 discussed it in the office.

19 Q. Did you consult with anyone related to, for
20 instance, the performance characteristics of
21 the boat itself?

22 A. No.

23 Q. Did you rely on any facts that you didn't
24 see yourself?

↑

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1 A. I don't believe so.

2 Q. When I say that, you had conversation with
3 Mr. Andersson so you would have relied on
4 what he told you or what you remember from
5 that conversation, correct?

6 A. Correct. We would have relied on that; we
7 would have relied on what we saw onboard and
8 obviously prior knowledge and experience
9 comes into this a fair amount as well.

10 (Short recess taken.)

11 (Exhibit 39 marked
12 for identification.)

13 Q. Mr. Ball, I'm going to pull that up so you
14 can take a look at it real quick.

15 A. I've got it here in front of me as well.

16 Q. Do you see it now?

17 A. I see it. Caribbean Marine Surveyors,

18 Limited.

19 Q. That report will be marked as Exhibit 39.

20 It's dated Friday, September 4th.

21 Can you tell us what that is,

22 Mr. Ball?

23 A. This is a report that we were asked to

24 prepare on the policy navigational limits

↑

108

1 and the shortest path within and as to

2 whether or not that fit this vessel.

3 Q. Can you describe generally what the system

4 was that you used to make, to see if that

5 was the case or not, in your opinion?

6 A. So we took a measurement of 150 nautical

7 miles from sort of the closest points of

8 land within the Caribbean basin and

9 generated a, sort of a low resolution idea

10 of where that 150 nautical mile boundary was

11 in relation to the island chain. We then

12 tried to measure the shortest path within

13 that boundary from Aruba to the Dominican

14 Republic. We measured the mileage on that

15 across the time that we were, at least

16 that's been described as far as the

17 departure time of the vessel and the arrival
18 time in the Dominican Republic. Then
19 effectively a speed distance and time
20 calculation to determine how fast the boat
21 would have needed to be going to make that
22 distance in the allotted time.

23 Q. Was it your understanding or your conclusion
24 that, for instance, a straight line across

↑

109

1 if he had left, which isn't what Mr.
2 Andersson is saying he did, but if he had
3 gone straight over from Aruba to the
4 Dominican Republic would that have violated?

5 A. As informed of the policy wording, yes.

6 Q. When you said you drew the lines, did you
7 essentially measure out circles around the
8 closest points to the Caribbean so you could
9 see where the edges were to create this
10 perimeter?

11 A. Correct. We basically tried to create 150
12 nautical mile, you could call it a coastal
13 area if you'd like, from the shores of the
14 Caribbean through the Caribbean chain, and
15 then measured the shortest possible distance

16 from the departure and the arrival point
17 through that boundary.

18 I think that chart is attached to
19 this report, correct?

20 Q. Yes, I'm going to show you that. Let me do
21 that now. We will take a peak at that.

22 There were two charts attached and
23 I'm going to pull up both of them. I think
24 what I have here is going to show you what

↑

110

1 you need. Can you see this?

2 A. Yes. That's the other chart. This is not
3 the one that shows the shortest distance.

4 Q. Let me shift over to the other one. There
5 were two, like I said, so we will go to the
6 other one.

7 We're going to mark this chart or
8 picture of this chart as Exhibit 40.

9 (Exhibit 40 marked
10 for identification.)

11 MR. GOLDMAN: For the sake of the
12 record, can you read the Bates stamped or
13 have the witness read the Bates stamp so we
14 know which map.

15 MS. NIEMEYER: The Bates number is
16 CF000160.

17 MR. GOLDMAN: Thank you.

18 Q. Can you explain, Mr. Ball, what this is?

19 A. Sure. What we've done here is taken a
20 compass at the same distance of 150 nautical
21 miles at along the south side of the chain,
22 we sort of hit the outlying northerly
23 points, outlying westerly points on the
24 island on the east side of the chain,

↑

111

1 etcetera, and drawn 150 mile marks from
2 those point to give a broad idea of where
3 the 150 mile boundary might sit.

4 The exercise started just to ensure
5 that one couldn't just go straight across
6 from A to B. If you look slightly to the
7 west it wouldn't have been far off.

8 Q. Six miles if you want to know exactly.

9 A. And so we then drew a course through that
10 boundary, through what we saw at the
11 shortest point; keeping in mind that the
12 thickness of a pencil on a chart is probably
13 worth a couple of miles on its own. It is a

14 very low resolution chart. But, again, it
15 was a broad idea of how many miles it would
16 be from Aruba to, I can't remember if we
17 plotted to Boca Chica, or we probably
18 plotted perhaps to, I think, he went to
19 Santo Domingo first, right, before he went
20 to Boca Chica. They are relatively close
21 anyway.

22 Q. On the eastern edge of this where you were
23 creating a western, let's say, the western
24 border of that no-fly zone of sorts, what

↑

112

1 were the islands that you used?
2 A. I'd have to follow back each compass point,
3 I'm afraid. But we basically made an effort
4 to hit every one that would sort of have
5 relevance. We definitely would have used
6 Grenada. It looks like perhaps the next
7 arch might have been somewhere around St.
8 Vincent; perhaps Dominique, maybe
9 Martinique, and we sort of went all of the
10 way up through Martinique probably
11 Guadeloupe and then up to Antigua, Barbuda,
12 St. Bart's, etcetera, where the arch starts

13 to turn a bit more southerly in its
14 relevance.

15 Q. How did you determine what was relevant when
16 you said every one had relevance?

17 A. Well, safe harbor we sort of treated every
18 island as some sort of safe harbor or as
19 land. Because you can get in the lead of
20 each island anyway.

21 Q. Is there a reason that you were looking for
22 safe harbor?

23 A. Safe harbor is what we would normally
24 consider in terms of a distance to account

↑

113

1 for navigational limit. Now, I'm sure
2 that's a point for you guys to determine.
3 For me, the purpose of a distance from shore
4 is a distance from safety. If there was,
5 for instance, a rock in the middle of the
6 ocean, I would not count that as safe harbor
7 but that might be something that attorneys
8 argue.

9 Q. Are you aware of a Venezuelan island chain
10 called Isla Aves islands?

11 A. Yes.

12 Q. Are they on this chart?

13 A. They are probably not. It's very, very
14 small. To give a little context, the first
15 time I came across Isla Aves, I started to
16 wonder what the tiny light in the middle of
17 the ocean was because it wasn't on my
18 charts. If it's on here, you can tell me
19 it's on here.

20 Q. I'm looking because I want to get us to a
21 place where we can see.

22 A. That's it there.

23 Q. I'm circling with my cursor, can you see
24 that?

↑

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1 A. Yes, I can.

2 Q. I wasn't sure if it would delay.

3 So this is this place where it says
4 Aves Island or Bird Island where I was just
5 referencing. Is it fair to say you did not
6 use Aves Island as land?

7 A. I don't think it even actually cropped up in
8 our head when we were drawing this. But
9 come to think of it now, I think, well,
10 most policies exclude Venezuela, right?

11 Q. Is Venezuela land?

12 A. Yes, absolutely. There's land there.

13 People live there.

14 Q. You definitely can't go to land and you

15 can't go hangout there and safe harbor

16 there. Would you consider it land?

17 A. Yes, absolutely.

18 Q. Did you review the policy language before

19 you created this map?

20 A. Not to that level of specificity, no.

21 Q. I'm going to just go to a piece of the

22 policy for a moment. I'll stop sharing that

23 for a second and go to this other page. I'm

24 referring to already marked Exhibit 7, which

↑

115

1 is a copy of the policy, and I'm at Bates

2 label page AB000153. I will represent this

3 is not the policy form, it's actually the

4 claims guidance that was attached to the

5 policy that was provided to the insurance.

6 And it says, what does miles offshore mean?

7 Do you see that?

8 A. Yes.

9 Q. Where we have advised a mile offshore limit

10 this means that this is the farthest your
11 vessel must be from land within your defined
12 navigation limits. For example, Lake
13 Michigan only not to exceed 15 miles
14 offshore.

15 If we consider that Aves Island to
16 be land, would that have been another
17 location you would have drawn a circle
18 around?

19 A. On the basis of land, absolutely.

20 Q. I'm going to get rid of that and we will go
21 back to our chart. We are back to the
22 chart. You see where Aves Island falls in
23 relation to the lines that you've drawn in
24 for other islands, right?

↑

116

1 A. I do.

2 Q. Would including Aves Island in your
3 consideration make a significant difference
4 in the distance that was calculated?

5 A. I'm going to be careful with my words here.
6 It would definitely shorten the distance; in
7 terms of significance, that's another
8 speed/time distance calculation I would want

9 to draw out before I said is it significant
10 or is it not. It is certainly considerably
11 shorter distance with that included.

12 Q. You can't know sitting here right this
13 moment whether or not that calculation
14 works, correct?

15 A. Correct.

16 Q. But is it fair to say that that inclusion
17 may place the validity of your opinion in
18 question?

19 A. It would certainly place the validity of
20 this calculation in question, yes. My
21 opinion based on this calculation. Whether
22 or not my opinion would differ based on a
23 different calculation, I can't say without
24 doing the calculation.

↑

117

1 Q. That was the part where you talked about the
2 distance you felt it was a certain distance
3 and the boat had to go a certain speed to
4 get that far, in your opinion, you felt it
5 couldn't have covered the space that
6 quickly, correct?

7 A. Correct.

8 Q. Now, I want to go to something I saw here.

9 The red line that you see here, is that
10 where you presume would be the shortest
11 distance based on this?

12 A. Based on the boundaries that we drew the
13 shortest distance within that boundary
14 before you could change direction closer to
15 the designation.

16 Q. I noticed here that the red line starts at
17 what I'll call the top left where the
18 northwestern most point of Aruba, correct?

19 A. Correct.

20 Q. Is there a reason that you had the departure
21 from the northwestern point of Aruba?

22 A. Benefit of the doubt more than anything.
23 The distance between the north or the south
24 is not massively relevant in the overall

↑

118

1 scheme of, you know, does it shave a couple
2 of hours versus a couple of days I feel.
3 And it's obviously closer to the
4 destination.

5 Q. Do you have an understanding of where
6 Mr. Andersson actually hopped off from Aruba

7 so-to-speak?

8 A. I think, we probably have that in the
9 report, yes. But, again, the point of this
10 exercise was not to chart out pilotage per
11 se, it was just to chart out a large scale
12 passage plan.

13 Q. I'm going to go to the other chart that you
14 provided.

15 We will mark that chart as 41.

16 (Exhibit 41 marked
17 for identification.)

18 MS. NIEMEYER: 41 has Bates number
19 CF000159.

20 Q. Do you see that?

21 A. Yes.

22 Q. What was the point of this chart?

23 A. I believe what we did here was we took,
24 there were a couple of different statements

↑

119

1 or accounts from Mr. Andersson. One of
2 which was, in broad terms, what he told us
3 following the incident and then later
4 signed. And another, I think, if I remember
5 correctly, was in a court filing.

6 Basically, one of the accounts, and it may
7 have just been missing detail but we take it
8 at face value. If I headed for St. Martin,
9 things got bad, and I got blown off and
10 ended up heading to Santo Domingo, in a
11 broad sense.

12 The other account, all of a sudden
13 we were going to Grenada and we got blown
14 off. I know where this came from. This
15 came from, there was a deposition record
16 where, I guess, Michael had been asking sort
17 of hour by hour questions so we tried to
18 extract what we could from that to give an
19 idea of what the different courses might
20 have been based on that information and how
21 they would play into the navigational limits
22 as well.

23 There's a report that goes with
24 this. And in the report, I think it

↑

120

1 probably details out what the points on the
2 chart are and how we got there. It's quite
3 some time ago when I drew it up, but,
4 obviously, I wouldn't just make the points

5 on the paper without trying to qualify them
6 as to some idea how we got there.

7 Q. I was just going to point out that the date
8 of this predates when the depositions were
9 taken. Here's what I'm going to do here.
10 I'm going to open that document also.

11 A. It should probably say what it's referenced
12 from in the report.

13 Q. Right. Exactly.

14 (Pause)

15 A. I have a document here, which is, U.S.
16 District Court, District of Massachusetts,
17 Great Lakes versus Andersson Martin. It's
18 got, first title on it is answer, then
19 admitted, admitted, denied, denied. This
20 says it was filed on the 12th of May, 2020.
21 That's where we got most of that
22 information, because I realize in the report
23 it just says based on statements made by the
24 insured.

↑

121

1 Q. It was Mr. Andersson's counterclaim. Okay.
2 I'm just going to go here to my screen, I'm
3 going to share my screen instead of what I

4 was sharing so you can see. What I want to
5 do is get your report next to the --

6 A. I have the report in my hand, if that helps.

7 Q. It doesn't help screen real estate because
8 others won't be able to see it. Hold on one
9 second. I'm going to get this to open.

10 That's 161 and 159. Let's get 159 open.

11 (Pause)

12 Q. As we go through here, I'm going to walk
13 through this report with you. You did this
14 in September of 2020 and you said you
15 reviewed the counterclaim. And what it said
16 in the counterclaim, depositions hadn't been
17 taken yet so you couldn't have reviewed any
18 deposition statements. You had spoken with
19 Mr. Andersson and you had investigated the
20 vessel, correct?

21 A. Correct.

22 Q. As we go through here you mention right in
23 the beginning here, "I've attached a chart
24 in the images section of the report labeled

122

1 chart one detailing the boundaries."

2 That was the one we looked at

3 first, correct?

4 A. Correct.

5 Q. So that's the one that has Bates number 160
6 and has circles on it.

7 A. Correct.

8 Q. And that was the basis for this calculation
9 where we've agreed that you need to
10 recalculate if Aves Island is part of your
11 calculation?

12 A. Correct.

13 Q. The second conclusion that the distance of
14 805 nautical miles traveled for the period
15 of time, etcetera, this is also something
16 that you would have to redo that calculation
17 to know whether it's valid, right?

18 A. Correct.

19 Q. And I wanted to just ask, you mention
20 environmental conditions reported and
21 recorded by weather stations in the area, at
22 the time records winds out of the east at
23 speeds consistent, etcetera.

24 What level of research did you do

↑

123

1 regarding the weather?

2 A. There's a source we used called Wind Guru,
3 which has basically on-line they have, not
4 for every weather station, but they have
5 historical reporting for weather stations.
6 I don't know if they still have this far
7 out. But so we would have probably looked
8 at Aruba, maybe Grenada, Martinique, we
9 would have taken hot spots that had some
10 sort of historical data just to ensure that
11 everything was as reported, which according
12 to the report I think it was.

13 Q. Did you record or document that in any way,
14 did you keep a printout?

15 A. No, I don't believe so.

16 Q. Did you write it down?

17 A. In the report.

18 Q. So you didn't write down the readings or
19 anything, you just said it was consistent?

20 A. Correct.

21 Q. Okay. So we don't have any specific
22 knowledge about the weather other than that
23 it was generally consistent with what
24 Mr. Andersson said; is that correct?

↑

1 A. Correct.

2 Q. Does the weather tend to be different in
3 different locations as you move through the
4 Caribbean sea?

5 A. Very slightly. I mean, it's a fairly large
6 geographical area and wind and swells, not
7 necessarily swells in this case, but wind
8 generally working in a circular fashion
9 based on the coriolis effect.

10 The wind direction at the southern
11 end of the Caribbean may be 15, 20 degrees
12 different than the northern Caribbean. Not
13 always. But that's why we would check.

14 Q. We don't have any record of what backs up
15 this report?

16 A. Correct. I don't have any of that recorded.
17 We might be able to go back and find it
18 still.

19 Q. You mention now, okay, it was previously
20 reported in the signed statement that he
21 left Aruba bound for St. Martin on a course
22 to steer 50 degrees and adjusted further
23 west as necessary due to sea conditions
24 ending in the Dominican Republic.



1 What made it, what did he say to
2 you that made you believe that his course to
3 steer would be 50 degrees?

4 A. Let me have a look at the -- I'm just
5 reading from his statement. I will shorten
6 it down a little bit to the relevant part.

7 It says, "Once around the point
8 made a northeasterly heading with intended
9 destination course to steer of 050 degrees
10 to St. Martin."

11 Q. Did you ever ask him whether he had any
12 intention to steer that course the entire
13 way or whether he was planning a different
14 course at some point? His ultimate
15 destination was clearly St. Martin?

16 A. Right.

17 Q. But did you clarify that with him in any
18 way?

19 A. No, not beyond the fact that 050 from Aruba
20 is a direct line to St. Martin.

21 Q. Could that be coincidental?

22 A. Absolutely.

23 Q. And is it your understanding, or do you have
24 an understanding of different uses of the

↑

126

1 words course and route?

2 A. Yes, they are absolutely different. They
3 are different words with different meanings.

4 Q. Can you explain from your understanding what
5 those words mean?

6 A. To me, a route is actually a series of
7 courses. A route is a number of courses
8 connected together to get from, you could
9 say, from A to B or A to Z, I guess.
10 Whereas, a course is one direct line.
11 Keeping in mind, in a nautical sense there
12 are also multiple definitions of course;
13 course to steer, course over ground.

14 Q. Okay. So could you understand a course to
15 St. Martin to include a route of a number of
16 points to get you there?

17 A. Yes, absolutely.

18 Q. I want to point to a place on the third page
19 of this report. You mention shortly after
20 departure, in fact, you quote that here.
21 Where did that quote come from?

22 A. That may have also been from that written
23 statement. Yes, that is, in fact, the next

24 paragraph of that same statement.

127

1 Q. Can you read that to us?

2 A. Sure.

3 It says, "Shortly after departure
4 it was found that the vessel was not making
5 good way to windward and that the crew was
6 becoming seasick. The course of the vessel
7 was adjusted to a more northerly course to
8 Ponte, Puerto Rico.

9 Q. The reason I'm asking you about this, I'm
10 going to open up since you're seeing my
11 whole screen you'll see this, the
12 handwritten notes. And, Mr. Ball, this is
13 marked as Exhibit 30.

14 These handwritten notes are notes
15 that were taken by you when you met with
16 Mr. Andersson, correct?

17 A. Correct.

18 Q. Is it possible in writing your written
19 statement, the transcription of this
20 so-to-speak into typed form, that you made
21 assumptions that weren't in your handwritten
22 notes or weren't said?

23 A. Well, I'm reading the handwritten notes
24 here. And my notes say crew seasick; not

↑

128

1 making way to wind, which is windward;
2 changed course north to Ponce.

3 Q. Does it say anywhere that that is shortly
4 after departure?

5 A. Not specifically, no. Of course, that is in
6 what we sent to Mr. Andersson to verify as
7 well.

8 Q. Is there anything in what was written down
9 that defines with specificity what happened
10 during those time frames; particularly,
11 right after departure or what most of us
12 would consider to be shortly after departure
13 as opposed to the entire second day?

14 A. I suppose another question would be what is
15 the definition of shortly. We can all see
16 what's written in the statement there.
17 That's what it is all based on.

18 Q. I'm not sure what this noise is but somebody
19 is either touching something or there's wind
20 or something. I can't hear you.

21 A. It's me, I had the report on the keyboard.

22 Sorry. And there is wind as well.

23 We can all read what's handwritten

24 there. Those are the notes that I took.

↑

129

1 The data that's there is what was collected
2 in its entirety. The gaps in that, if there
3 are gaps, obviously between the handwritten
4 statement and the typed one would be the
5 reason that we would send it to him to
6 verify rather than just transcribing the
7 handwritten part into our report, which, of
8 course, he has verified or he did at the
9 time anyway.

10 Q. Okay. This is where language usage may have
11 been an issue. But that's not your problem.

12 Would your opinion be different,
13 for instance, it says here, crew seasick,
14 not making way to wind, changed course north
15 to Ponce. Does that imply to you that he
16 was far enough east that he needed to go
17 north to get to Ponce?

18 A. Not really. I suppose, potentially it would
19 have taken a few days to get that far east.

20 Q. At this point, let's assume that he's a day

21 and a half, he left in the late afternoon,
22 and at least a full day.

23 A. When we went through this with him, we went
24 through this in chronological order. It's

↑

130

1 basically to say, okay, tell me what
2 happened. Where did you start? Here's a
3 couple of questions about the boat, about
4 the crew, what happened next. If there's
5 information missing, much like what you do,
6 I will ask, what about this one thing. I do
7 try not to ask leading questions. I won't
8 say, was the sky blue. I will say, what
9 color was the sky or was there a sky.

10 Taking into account that this is in
11 chronological order, we talked about a
12 departure on Saturday. We go through those
13 two paragraphs. And the next paragraph
14 speaks about the weather deteriorating into
15 the Sunday. Within that bracket we're only
16 talking really about the first 24 hours at
17 most. We're talking about leaving at 5:30
18 on a Saturday night. That would be
19 relatively shortly after departure.

20 Q. A day later and a three day trip, but,
21 again, that's open for interpretation. I
22 wanted to make sure we're clear what we mean
23 by that. It could be interpreted as very
24 immediately after departure in which case

↑

131

1 it's a whole different story. That's a
2 question I want to ask you.

3 If we're assuming that, if our
4 understanding is that the crew became
5 incapacitated at some time well into Sunday,
6 is that, in your mind, the same kind of
7 situation as far as go back to Aruba as it
8 would have been if he turned out of the
9 channel and hit an hour or so and the crew
10 was incapacitated?

11 A. Perhaps not Aruba depending where he was.
12 But certainly go to the closest safe port.
13 Once you're at the point you're the only
14 person that can keep watch, realistically
15 the average human being can only maintain an
16 adequate watch for so long before they
17 themselves are incapacitated due to fatigue.
18 Mr. Andersson described some pretty nasty as

19 well which adds to that fatigue, and he's
20 trying to care for this other crew member,
21 in fact, I think, he said that in his
22 statement. The question to me is not so
23 much do we turn and go back to Aruba, it's
24 we're probably not even past the 50 percent

↑

132

1 point, the halfway point on our journey, why
2 are we not heading to the closest safe
3 harbor so we can find some flat water, drop
4 the anchor, regroup and replan, while then
5 we can maintain an adequate watch onboard.

6 Q. Did you ever speak with Mr. Noah, the crew
7 member?

8 A. No, we had no luck contacting him.

9 Q. Do you know whether Mr. Noah was
10 sufficiently capable to maintain a watch
11 after the course was changed?

12 A. The only details I have on Mr. Noah was by
13 what Mr. Andersson has given us because we
14 haven't managed to contact him.

15 Q. Do you recall, did you, I don't see it in
16 these notes but I want to ask about if you
17 remember this and if it was part of what

18 formed your opinion.

19 Do you remember whether you had any
20 conversation about Mr. Noah's condition over
21 that timeframe and whether it improved, for
22 instance, when the course was changed?

23 A. If we had conversation about it, it would
24 have been in the documents that we provided.

↑

133

1 Any record of anything, any correspondence,
2 any report, you have that now. I'm not
3 trying to be obstructive. It's more that
4 it's been a long time. The best I can do is
5 go back and check the information that you
6 have, to the best of my recollection.

7 Q. Sure. In creating this later report and as
8 an expert witness and the subsequent report
9 we are going to look at it, is it fair to
10 say that there was no additional
11 investigation, no additional interview or
12 discussion with anyone else?

13 A. Correct. This report was about the charting
14 exercise and the documents we had been
15 provided. We would have reviewed that
16 initial, I don't know what you call it, I'm

17 not a lawyer, the court documents there, we
18 would have reviewed because it had been
19 quite an elapsed time since the incident.
20 We would have reviewed our previous reports,
21 our previous photos.

22 It's the same thing for these
23 depositions. The best I can do is to sort
24 of refresh my memory and be helpful is to

↑

134

1 review the entire case again. And so, yeah,
2 try and sort of fill in some blanks based on
3 what we have documented and recorded
4 previously.

5 Q. I want to get to the bottom line of what you
6 had to say here. Your ultimate conclusions
7 here, essentially, tell me if I'm wrong,
8 were that it wouldn't have been possible for
9 the boat to go the distance that was
10 necessary in the time that there was and --

11 A. The first conclusion is really a
12 speed/distance/time calculation. It's a
13 mathematical question.

14 I would almost say that there is
15 not a whole lot of opinion in there. It's

16 based on the facts of the performance of the
17 boat and the information that has been
18 provided to us. Now, we know there's some
19 grayness in that information in terms of
20 people's recollection, etcetera.

21 Q. What did you base the facts of the
22 performance of the boat on?

23 A. Prior experience, probably the
24 manufacturer's literature, we might have

↑

135

1 gone on the boat's website. It's a standard
2 cruising catamaran, we've got lots of them
3 around here.

4 We did find at one point, we didn't
5 reference it at any point, but there was
6 somebody that had listed this boat as like
7 some sort of rocket ship. That's not
8 uncommon that people will suggest that boats
9 go very, very, very fast, and they may even
10 have achieved that surfing down a wave for
11 half a second in a nasty following sea, but
12 not in the sense that you would be able to
13 sustain any kind of high speed especially
14 through poor conditions.

15 Our assessment is made on the
16 design of the boat, our experience with this
17 very model of boat and similar boats, and
18 the conditions that have been described.

19 Q. Your second conclusion here is essentially
20 the same. It is applying that application
21 to the situation?

22 A. You can't go that fast, and if you did, it
23 wouldn't be safe anyway.

24 Q. Why not?

↑

136

1 A. The boat would be ripped apart in the
2 described conditions if it somehow managed
3 to attain that speed.

4 Q. When you say it would be ripped apart in the
5 described conditions, can you tell me more
6 about that?

7 A. Sure. I would have to go back to the report
8 and see what the described conditions were.

9 (Pause)

10 A. Item number one, we spoken about, average
11 cruising speed, fair weather, basically, an
12 assessment of the boat and its capabilities.
13 Then we move on to -- we see at one point he

14 stated that when he left the wind was 15
15 knots with a wave height of four to
16 six feet. Then he says that by the night of
17 the 15th wave heights were 10 to 12 feet
18 with a wind velocity of 25 knots. That's
19 quite rough depending on the wake period.
20 So to do, on the basis that you would do 11
21 knots or 11.2 knots as a sustained speed
22 offshore in a 10 to 12 foot see with 25
23 knots of wind you would quite simply
24 structurally destroy the boat and the rig.

↑

137

1 Q. Are you saying this because you would have
2 to sail at an angle to the wind that would
3 be destructive to the boat?
4 A. Correct.
5 Q. So as a prudent mariner you would bear off,
6 would you?
7 A. You would seek safe harbor, yes.
8 Q. Would it also be reasonable to bear off so
9 the conditions weren't quite so rough?
10 A. Correct, but that's not really what was
11 described to us. Because bearing off to any
12 significant degree, I mean, we can't

13 maintain that speed anyway. But to bear off
14 to any significant degree would either take
15 you north, and I suppose this comes back to
16 your argument about Isle Aves and that
17 calculation, or south which would take you,
18 depends how far along you are, but Curacao,
19 not Venezuela, there's not a lot of room to
20 go without turning back to Aruba.

21 Q. If you're in 12 foot seas with 25 knots
22 winds, I believe, I saw it somewhere in
23 something you wrote but I'm not going to go
24 looking for it at this moment, but it was

↑

138

1 your opinion that sailing directly downwind
2 was the most stable point of sail; is that
3 correct?

4 A. Most comfortable point of sale for the crew,
5 yes. The most stable would be what we would
6 call a broad reach until you get into some
7 really big breaking seas which is basically
8 putting the wind off your back quarter. It
9 means that if there is a following wave you
10 would have the option to slow your speed as
11 you go into the trough, you can basically

12 turn to the side. Does this sort of make
13 sense?

14 Q. Yes.

15 A. We're basically discussing relative speed
16 here. The boat and its movement in relation
17 to the wavelength, the wave form of the
18 wave.

19 It's a similar argument to upwind.
20 Obviously if you're going upwind you're
21 going very fast between trough and craft.
22 You're just slamming, slamming, slamming.
23 The idea is to slow that down.

24 In a very, very large sea with a

↑

139

1 short period if you go directly downwind you
2 run the risk of running the bow into the
3 trough and having, probably not the right
4 term, stern go over the bow.

5 Q. Just to be clear. Waves often run the
6 direction of the wind but they don't always,
7 correct?

8 A. Correct. So what we experience a lot in the
9 Caribbean is a swell more than, I would call
10 it a wind wave almost a chop. It's what

11 makes some of the great surfing here. We
12 rarely ever get wind out of the north.
13 However, consistently through the winter
14 months there is a north swell and that
15 generates by weather systems hundreds if not
16 thousands of miles to the north that just
17 gets pushed down.

18 Q. Okay. So the waves probably were not coming
19 straight at the boat with the wind direction
20 they were coming from a different direction
21 which was mostly from the north?

22 A. Correct. It depends what the swell forecast
23 was that day, but that's a fairly reasonable
24 assumption without other knowledge.

↑

140

1 Q. Did you look at the swell forecast in making
2 this opinion?

3 A. When we looked at the weather we probably
4 would have confirmed if there was swell
5 data, whether it was inline or not with our
6 expectation. But we haven't recorded that
7 anywhere.

8 Q. It wasn't part of the report, correct?

9 A. Correct.

10 Q. What you just mentioned you used the phrase
11 pitch pole, which I was going to use, can
12 you explain what that means?

13 A. It's basically when the bow of the boat gets
14 driven into the tropical wave and the crest
15 of the wave carries the stern over the bow.

16 I will preface that with this boat,
17 471, I think, a 47-foot boat. The waterline
18 length is pretty close to 47-foot. A
19 12-foot sea is not at risk of pitch poling
20 this boat.

21 Q. You mention that downwind would be
22 comfortable for a crew member. It appeared
23 in some of the written statements like if
24 you meant that it was safer that way, but is

↑

141

1 that really true, would you consider going
2 downwind in heavy conditions the safest
3 point of sail for a catamaran?

4 A. That depends on how heavy the conditions
5 are. A 12-foot sea, absolutely. It slows
6 down the wave period; it slows down the
7 motion and the forces applied to the boat.
8 It also lowers your apparent wind; in other

9 words, your speed in relation to the speed
10 direction of the wind is less. So the force
11 is applied to the boat are less.

12 Again, this comes back to my
13 comment about waterline length and pitch
14 poling. Once you get into some very, very
15 large breaking waves, let's say, 25, 30,
16 35 feet, then you have to start worrying
17 about pitch poling this boat. But a 12-foot
18 wave is not going to pitch pole the boat, it
19 might break over the bow, but that's what
20 the boat is built for.

21 Q. Could it cause damage to the boat?

22 A. So can sailing upwind. That's probably not
23 the answer you're looking for.

24 Q. Okay.

↑

142

1 A. Absolutely, a cubic meter of water is a
2 metric ton. Yachts are consistently in a
3 hazardous treacherous environment and that
4 is one of the reasons that heading towards
5 safe harbor when the conditions become less
6 than favorable, let's say, and especially
7 when your crew becomes unable to perform is

8 the prudent step.

9 MR. GOLDMAN: Excuse me for
10 interrupting. You have very bad wind, I
11 didn't hear part of the answer. Can we
12 verify the court reporter heard his entire
13 answer.

14 THE COURT REPORTER: Yes.

15 Q. I want to ask since you weren't there and
16 what you have as evidence is what you were
17 told and a minimal amount of weather
18 research, would you say that it's fair to
19 say that the captain of a ship as they are
20 in the conditions is the best one to assess
21 whether they believe the boat is safely
22 sailed in a certain point of wind or not
23 especially one that has been sailing the
24 boat?

↑

143

1 A. A qualified and experienced captain, yes,
2 absolutely. Basically, the assertions that
3 we've made, the opinions that we've made are
4 mainly based on Mr. Andersson's own
5 evidence. Further backed up, the weather, I
6 guess, would be classified as fact-checking,

7 let's say. And the reports I assume because
8 we didn't note otherwise, the reports
9 obviously agreed with what he described.

10 Now, if what he described is
11 accurate then we make a comparison of the
12 capabilities of the vessel to that
13 description and then what a prudent mariner
14 would do regardless of who that person is.

15 Does that sort of make sense?

16 Q. Yes.

17 Now, this third part of your
18 statement talks about the signed statement,
19 bound directly for St. Martin on a course to
20 steer of 50 degrees and adjusted further
21 west as necessary due to sea conditions.
22 And you say here this reported course has,
23 and we talked about that directly and where
24 your understanding of that was, it says that

↑

144

1 there wasn't, the reported course has not
2 taken into account leeway or current which
3 would have taken further to the west and
4 further off navigational limits.

5 If Mr. Andersson's language caused

6 him to tell you that his course was to St.
7 Martin without saying I'm going on this
8 planned route, is there a reason that you
9 believe he didn't take into account leeway
10 or current?

11 A. I believe, I was trying to interject, I
12 believe that the information regarding
13 leeway and current came from Mr. Goldman's
14 questions in those initial court documents.
15 I could be wrong. It might be something
16 that came later. I thought that document
17 had a series of questions of, do you
18 understand what leeway means or.

19 Q. That would be a deposition which was taken
20 after you wrote this report.

21 A. That would be later then. I strongly doubt
22 we would have pulled that out of nowhere,
23 and it's obviously not in his signed
24 statement. The only other source of data on

↑

145

1 that would have been his court filing or his
2 counterclaim, or whatever you call it.

3 Q. Are you looking at it now?

4 A. There's a lot of it, but I am looking at it.

5 Q. It was hard to understand what the basis of
6 you're saying that came from. That's why I
7 was asking.

8 A. It's been so long, I agree.

9 We certainly don't make information
10 up out of nowhere and we try not to
11 generalize or jump to conclusions.
12 Presumably it would have come from somewhere
13 in the information we were provided which
14 would be the information you were provided
15 as well.

16 Q. Is it possible that you assumed that based
17 on an understanding that Mr. Martin intended
18 to sail directly from St. Martin, from Aruba
19 to St. Martin in a line at 50 degrees?

20 A. Honestly, it's been so long. I don't want
21 to definitively say no. I think it is very
22 unlikely we would have made such an
23 assumption. But I think it's unfair for me
24 to say that we did or didn't.

↑

146

1 Is that fair?

2 Q. Yes. Let's move on to the next one.

3 (Pause)

4 Q. The next one it talks about different
5 accounts of the wind and the courses, while
6 they differ they all take the vessel outside
7 navigational limits according to your
8 understanding. I find it difficult not to
9 be distracted from the singular point that
10 based upon the shortest possible course in
11 the described, reported and recorded
12 conditions, etcetera, you don't believe he
13 could have reached the speed to cover the
14 distance. That's really the crux of your
15 opinion, correct?

16 A. Yes, this entire report is based on speed,
17 distance and time. That was the focus of
18 the report. There's some other arguments of
19 seaworthiness and fatigue to be made, they
20 are not in this report.

21 Q. And really the entire conclusion of this is
22 a question based on the existence of the
23 question of how you would recalculate that?

24 A. Correct. With all this coming to light, I

↑

147

1 would want to resubmit this report and
2 calculate that in.

3 Q. This next question has to do with, you say
4 at no point during the reported waves have I
5 been provided with any evidence or assertion
6 that it would not have been possible or, in
7 fact, prudent to turn to the closest safe
8 harbor and seek refuge.

9 Given what you said about the level
10 of the waves, that that level of wave was
11 not so high that it would be likely to sink
12 the boat or pitch pole the boat. If you
13 were to understand that the change in course
14 had improved the crew member's condition
15 enough that he was alright to stand watch,
16 would you still have said what you said
17 here?

18 A. No, probably not. That would be a very gray
19 area, I think. I think it would be fair to
20 make the argument that continuing on on a
21 different course and stabilizing the boat
22 may have been reasonably safe depending on
23 how long Mr. Noah had been "incapacitated".

24 The element of this is not really

↑

148

1 about Mr. Noah, obviously everybody cares

2 about his safety as well, but it's about
3 the, I am reluctant to use the term
4 seaworthiness because I know it's a very
5 specific legal term, but let's just use it
6 in an opinionated sense, the seaworthiness
7 of the vessel which is dependent upon the
8 seaworthiness of the crew. And the main
9 factor in the seaworthiness of the crew in
10 this regard is fatigue. Single-handing the
11 boat for an extended period of time leads to
12 fatigue.

13 The question is, one would sort of
14 be, how sure are you that this person is
15 going to recover, how can you be sure. So
16 would the prudent question not just be
17 shouldn't we just go to safe harbor now
18 before we become even more fatigue and put
19 ourselves in further danger.

20 I guess, in a real world scenario
21 the balance is, of course, about time and
22 money and do I have time to stop and catch
23 my breath and replan. When it comes to
24 seaworthiness that's not really a factor,

↑

1 it's a question of could you have done it.

2 That fair to say, does that make
3 sense?

4 Q. I understand what you're saying. Did you
5 ever ask -- we know you didn't speak with
6 Mr. Noah. I believe, I know the answer to
7 this but I want to confirm it.

8 Did you ever ask Mr. Andersson
9 whether he had the opportunity to sleep?

10 A. No, I don't believe I did. I don't believe
11 that came up in the course of this report.
12 If I did, it would have been in that
13 statement that he signed because that was
14 pretty much the crux of what we had from
15 him. If we had any additional data it would
16 have come through his counterclaim, as you
17 called it. I think, additional statements
18 have come to light through the depositions,
19 I think. But obviously they were after this
20 report.

21 Q. I'm going to move on to your other report.
22 Close this one. Keep that chart open just
23 in case.

24 I want to make sure, Linda, did we



1 mark?

2 (Pause)

3 MS. NIEMEYER: This next report is
4 dated August 16, 2021.

5 (Exhibit 42 marked
6 for identification.)

7 Q. This is our incident assessment it says at
8 the top.

9 MR. GOLDMAN: Can I interrupt for
10 one second. Before you get started, I have
11 his report of September 4th as Exhibit 39,
12 is that correct?

13 THE COURT REPORTER: Yes.

14 (Pause)

15 MS. NIEMEYER: I'm going to have to
16 ask you, Linda, to help me with this as we
17 go through. At the end we are going to talk
18 about the exhibit so I will get you what you
19 need.

20 Q. Number 42 is the August 16th report.

21 Mr. Ball, did you write this report?

22 A. Sure did.

23 Q. When you did write this report, did you rely
24 upon any additional information beyond what

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151

1 we've already discussed?

2 A. I believe that that was the basis of writing
3 this report was new information. What we
4 have written in that first paragraph is what
5 we relied on to write the report.

6 Q. So knowledge and interpretation of details
7 observed, that was your personal
8 observation.

9 A. Yes.

10 Q. The signed statement on December 23rd. Did
11 you also rely upon your handwritten notes
12 and any difference in the language in those
13 notes?

14 A. No, I would have relied on the one that he
15 signed.

16 Q. The original condition evaluation for
17 purchase survey, that's the prepurchase
18 survey we talked about?

19 A. Yes, correct.

20 Q. Court documents filed by the insured's
21 attorneys that would be the, well, on
22 December 5, 2020, what was that?

23 A. That's my mistake because we use a British

24 system. What I have here for your

152

1 counterclaim is 5/12/20.

2 Q. Okay. That was the counterclaim?

3 A. Correct.

4 Q. And transcripts of a partial deposition
5 which was June 4th, that's the deposition
6 you referred to before, correct?

7 A. Correct.

8 Q. We have all those things. If you need to
9 refer back to any of them, I can pull those
10 up so we can see them.

11 When you talk about navigational
12 limits here you say here Mr. Andersson was
13 unaware of his exact position or course. I
14 want to just ask you a general question
15 about that. Mr. Andersson was asked
16 questions in half hour increments. When
17 you're sailing a ship or you're sailing a
18 sailboat and I know you mentioned logs, but
19 are you aware every half hour of where you,
20 exactly how fast you're moving, etcetera,
21 etcetera, the questions that were asked in
22 that deposition?

23 A. In terms of am I aware of what I'm doing 7.5
24 or 7.8 knots, no. Am I aware that I'm doing

↑

153

1 six to eight knots, yes. This is something
2 that I would record in writing hourly in a
3 logbook. But it's also something that, as
4 long as you're on watch obviously, if you're
5 not on watch you're probably asleep and
6 completely unaware but somebody is aware.
7 But, yes, I'm going to be aware of where I
8 am and how fast I'm going and in what
9 direction I'm going.

10 Q. Would you have an idea of how fast you're
11 going at any given moment in time?

12 A. Again, am I aware of whether I'm doing 7.1
13 knots going up the wave or 8.2 going down,
14 no, I am not going to pay attention to that
15 in short intervals. But, again, am I doing
16 five knots, eight knots, 10 knots, yes,
17 absolutely.

18 Q. Would you expect that if you were on a
19 multi-day voyage apart from the log would
20 you have an independent recollection in your
21 head of those kind of details?

22 A. To say specifically what speed and course
23 were you doing at 9:30, probably not. But
24 at the same time if I can say, well, I left

↑

154

1 at 5:00 and we did a watch change at 10:00
2 then I can approximate, yes, roughly where
3 things happened within the different, let's
4 call them milestones.

5 Q. Would you remember those two years later?

6 A. I don't remember much about this two years
7 later. I'll preface that with, one of the
8 things that we come across and it's one of
9 the reasons that we did that statement right
10 after the incident and why we relied on it
11 so heavily is that this is a traumatic
12 experience, is that this is a traumatic
13 experience and memory has a way of fading
14 and also almost recreating and changing
15 itself. There's some interesting books
16 written about it, but the concept that we
17 can have this conversation and in 10 years
18 you will probably remember it just the same,
19 if you remember it at all, but you might
20 remember me wearing a red shirt instead of a

21 blue shirt. Things just change.

22 I think on one side this is an
23 event that is probably going to play in Mr.
24 Andersson's head again and again and again

↑

155

1 and there will be some details, some minute
2 details which he probably or should remember
3 explicitly. There are others that he will
4 think he remembers and has wrong anyway.

5 We kind of have to take all of that
6 with a grain of salt but at the same time we
7 have to get as much information as we can in
8 order to inform ourselves, if that makes
9 sense.

10 Q. Knowing that this is a traumatic experience,
11 is there anything you do in collecting the
12 information to assure that you're getting
13 the best recollection that you can?

14 A. If I come across and assure he's sort of
15 having an episode, I'm not going to sit down
16 and take a statement obviously. There's
17 only so much I can do, you know, I'm not a
18 mental health counselor. But at the same
19 time, I am always looking for signals that

20 somebody is maybe not in their right mind
21 and I would note that if I saw that.

22 Again, to come back to what I
23 assume is the crux of that question, when I
24 to Mr. Andersson, given the circumstances,

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156

1 he was reasonably cool, calm and collected.
2 If I remember correctly, and we talked about
3 a time-line and the photos will show that,
4 but I think we went out to the boat sort of
5 right at sunrise, as the photo showed, we
6 would have looked at the boat and then
7 probably come ashore and dried off before
8 meeting up again.

9 On one side he's just seeing his
10 boat breaking apart. On the other side he's
11 had a moment to collect himself and think
12 about this before we sit down. It is one of
13 the reasons we sort of went to this coffee
14 shop; the boat is out of sight, it's out of
15 mind, you're removed from it, it's a calm
16 environment. Sort of the best you can do in
17 a bad situation.

18 Q. And to pave that scenario a bit more, is it

19 your understanding that Mr. Andersson was
20 there at that point by himself away from
21 home?

22 A. Yes, absolutely.

23 Q. Was it your understanding that he did not
24 speak Spanish?

↑

157

1 A. I think he did say that. Long time ago.

2 Q. And did you have any awareness about the
3 Navy having placed demands upon Mr.
4 Andersson to salvage the boat and take it
5 out of there before he could leave the
6 country?

7 A. I don't recall. That's pretty normal
8 especially in places like the Dominican
9 Republican, there's normally some saber
10 rattling because they like money.

11 Q. You understand that Christmas was days away?

12 A. Yes.

13 Q. Do you have an understanding about the time
14 frame or amount of time that Mr. Andersson
15 was given to read and sign and return to you
16 the written statement that you have referred
17 to that he signed?

18 A. If I recall, and you have copies of the
19 e-mails as well, I believe, that should all
20 be in the package, but I would have taken
21 this statement on the handwritten notes,
22 probably gone back to the hotel and typed it
23 up.

24 I don't believe that I would have

158

1 put a time frame on this. Underwriters may
2 have said something or he may have inferred
3 something, but it's not normal that I would
4 write this up and say get it back to me
5 tonight or whatever. I would say read this,
6 make sure you understand, if you agree with
7 it sign it and send it back to me. If not,
8 let us know what you don't agree with.

9 Q. Once you sent the statement, once you sent
10 the report that was sent with that unsigned
11 statement at the time to the insurer which
12 was the 23rd of December, was that your last
13 involvement?

14 A. I believe so.

15 Q. Did you ever speak with Mr. Andersson other
16 than e-mailing him that statement, did you

17 have any conversations with him about it?
18 A. I think, at one point it may have been
19 handled with one of his representatives that
20 e-mailed and said do you have my GPS, and we
21 e-mailed back and said, no, we don't. We
22 didn't have any substantive conversation or
23 bring any, deliver any new information to
24 each other beyond that.

↑

159

1 Q. You mentioned, did you have the GPS. You
2 mentioned earlier that he gave you
3 authorization to take the GPS, correct?
4 A. Yes.
5 Q. But you said you never did take it?
6 A. Correct.
7 Q. Was there ever a time when you recommended
8 that it be taken?
9 A. No, I don't believe so. In a normal
10 situation here we would move to salvage and
11 we would assist underwriters to organize
12 salvage. At which point, we would ask the
13 salvage to save the GPS devices for us.
14 Obviously, because salvage or underwriters
15 never perform salvage, I don't believe Mr.

16 Andersson did either, then no instruction
17 was given to take the GPS.

18 Q. You weren't involved in that point to know?

19 A. Correct.

20 Q. You mention, I'm going to go back to the
21 report.

22 A. Sure.

23 Q. You talk about the transcript and then you
24 talk a bit about, you say, it is the duty of

↑

160

1 a prudent mariner to ensure that up-to-date
2 charts and publications such as almanacs and
3 cruising guides are kept onboard. The
4 insured has reported that there were no
5 paper charts onboard for the Dominican
6 Republic.

7 Do you have documentation where you
8 took notes about that?

9 A. No, I don't.

10 Q. Do you know whether there were any -- we
11 mentioned already generally paper charts.
12 You didn't, it sounds like, look for those,
13 correct?

14 A. No, we didn't try and go through the vessel

15 because it was already falling apart.
16 Again, that's something that we might look
17 at during salvage again but that never
18 happened.

19 Q. Where the intended cruising route doesn't
20 come anywhere near the Dominican Republic,
21 would it be your expectation that there
22 would be paper charts for the Dominican
23 Republic in the planning of that voyage?

24 A. No, I would expect there to be paper charts

↑

161

1 for the destination and in between and maybe
2 a couple of safe ports in between.

3 Just to put that into context
4 because I kind of know where you're going
5 with this, I think. The question sort of
6 goes two ways; one is, okay, sorry, let me
7 put this another way. You're in a foreign
8 port that you don't know; you have no local
9 knowledge; you don't have anybody to guide
10 you in; it's dark; it's rough. A prudent
11 mariner is either going to stay offshore or
12 anchor in safe water. But proceeding to
13 closer to shore in an area they don't know

14 is a ridiculous risk. It's sort of half
15 dozen one of the other, I guess, either you
16 can have charts that say, right, I knew
17 where I was going and something went wrong,
18 or you can say I didn't know where I was but
19 I went close to shore in the dark anyway.

20 Q. How far from shore was this breakwater?

21 A. Probably 2, 300 feet.

22 Q. What is your understanding of about what was
23 going on at the time when the boat went
24 aground?

↑

162

1 A. It sounds like everybody was pretty tired
2 and they were waiting for somebody to guide
3 them in, if I remember correctly.

4 Q. Did you have an understanding about whether
5 Mr. Andersson had a local chart on his GPS?

6 A. I don't believe I had that understanding
7 then, no. Obviously we do now.

8 Q. And have you reviewed the information that
9 was provided?

10 A. I have. And so that chart shows the bottom
11 shelving up very rapidly and then it shows
12 an area of no chart data surrounded by

13 islands in a very shallow area. Again,
14 having no data is like having no chart.
15 Granted that is part of that chart, which I
16 think was, I can't remember now, it was a
17 2015 chart, it was quite a few years old.

18 Anyway, we since confirmed that
19 that breakwater is actually naturally
20 occurring. It's something that's probably
21 been there for thousands of years, it's not
22 like somebody made it in the last 10 years
23 and it didn't get on the latest version. So
24 that's a different thing.

↑

163

1 Again, as a mariner I read that
2 chart and go, right, bottom shelving up
3 here, there's no data there which means that
4 area is either a wash or there is just no
5 data. Then there's a shallow area beyond
6 it, let's not go over there.

7 Q. As someone who is involved heavily in the
8 yachting industry and having worked with a
9 number of charter vessel, etcetera, would
10 you consider it reasonable for someone to
11 rely upon their Garmin chart as accurate?

12 A. Provided it's updated, yes. I go back to
13 this, I mean, in terms of reasonable, we see
14 this relatively often where this very
15 question comes up. Was it on the chart; was
16 it not. Well, it wasn't on the chart but
17 it's on the new chart and the chart wasn't
18 updated.

19 The requirement for up-to-date
20 charts is one that is spread across all
21 mariners. Especially in a commercial aspect
22 you're actually required to keep a log of
23 when you update your charts. Again, it's
24 sort of prudent mariner.

↑

164

1 I won't hesitate to say that there
2 are plenty of people that do not update
3 their charts. But I wouldn't say that
4 alleviates them of any responsibility to do
5 so.

6 Q. Would it be your expectation that a
7 recreational sailer would update their
8 charts every time a new chart version came
9 out?

10 A. No, but I would expect them to at least

11 update their charts annually.

12 Q. Is there documentation somewhere where
13 you're relying on it for that as a guideline
14 or rule?

15 A. I'm sure we can probably dig something up,
16 but it would probably pertain in a legal
17 sense to commercial vessel. Again,
18 probably, look at Chapman Seamanship or, for
19 instance, the Yacht Master Syllabus. But
20 most of the publications you will find on
21 seamanship speak to charts should include
22 that.

23 Q. You mention that you have confirmed this was
24 a naturally occurring breakwater. We all

↑

165

1 thought it was manmade. But it would have
2 been there if it was on older charts or
3 newer charts it should be on the chart,
4 right, it was there in 2015 and probably
5 there in 2000?

6 A. This came up last week because I'm sort of
7 sitting there going, how is this not on the
8 chart it can't be that new. So I e-mailed
9 the guide shop that is there on the beach

10 and said, hey, you know, what can you tell
11 me about this breakwater, when was it built.
12 And he said it's always been there, it's
13 naturally occurring, it's basically a dead
14 reef. So all of a sudden now we are sort of
15 looking at it going, well, that's not really
16 a case of up-to-date charts. That's the
17 case of an accurate survey or reading and
18 having the chart.

19 So that's when I went back, because
20 for some reason I read the report from the,
21 sorry, I can't remember his name the guy
22 that interrogated the GPS and wrote the
23 report, I read his report but I had not seen
24 the photos that came with it. So I looked

↑

166

1 at the photos which showed the chart image
2 and that's what I'm referring to when I say,
3 well, we can see it shelf up, we can see an
4 area of no data. While the chart isn't
5 quite as great as the Navionics ones which
6 color in a different color, that still shows
7 an area of shallow water.

8 Q. Let me ask you also, and I think this is

9 somewhat relevant, when we looking at
10 photographs -- give me one second.

11 (Pause)

12 Q. Do you see the posts here?

13 A. It's a mangroves nursery.

14 Q. Just to identify the photograph, I'm showing
15 Mr. Ball AB000363 which was part of
16 Exhibit 36. You said that's a mangroves
17 nursery.

18 A. I did some research last week on this
19 breakwater because it was perplexing me a
20 little bit. There's a number of articles
21 about coastal erosion. We do the same thing
22 here, it's pretty common in the Caribbean.
23 Mangroves have been cut down and killed due
24 to pollution and all sorts, but they are

↑

167

1 great at holding shorelines together and
2 stopping coastal erosion. So an erosion
3 area quite common to plant mangroves and
4 they use the PVC pipes to give them a bit
5 more of a protected environment to take
6 route.

7 Q. So those were not intended to be some sort

8 of navigational marker sort of world style
9 to show people that they should stay away
10 from the breakwater?

11 A. No, not at all. And those are also on the
12 inside of the breakwater. They are not on
13 the seaward side.

14 Q. Right. And that was actually my point was,
15 when you're looking from far away you might
16 have thought those were sticking out but
17 they would have looked like that's where it
18 was not closer?

19 A. Perhaps, yeah. If I remember correctly and
20 it's possible I don't, Mr. Andersson said
21 that he didn't see the breakwater. And
22 that's something that caught my interest
23 before because -- when you come to this
24 breakwater in the dark, like I explained,

↑

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1 there's a series of hotels and resorts on
2 the beach. They put off quite a lot of
3 light. So you have an area of in rough seas
4 at the very least breaking water, where the
5 water is breaking on the breakwater which
6 you can see because of all that light and

7 you can see the flat water behind it. The
8 sea doesn't naturally go from rough to flat
9 without something very close to the
10 waterline stopping it, at least without some
11 weird current or something.

12 Now, honestly, given everything
13 else that's described, they are probably
14 quite tired when they arrived and they might
15 not have seen it. But I would have expected
16 the breakwater, regardless of where the
17 breakwater itself was lit or marked, to be
18 fairly visible in the hazard because of the
19 very visible change in water condition.
20 Does that make sense?

21 Q. It does if the water condition was like it
22 is now. But do you know if it was when they
23 got there, what the actual condition was?

24 A. I don't, but there's two sides. One is,

↑

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1 it's flat on both sides and you can see the
2 breakwater itself. Or the other is, it's
3 rough on the outside of the breakwater and
4 all of a sudden it becomes flat when you get
5 to the breakwater. There's a visible change

6 there or a visible hazard. This is
7 hypothetical without going out there in
8 similar conditions.

9 Q. Sure. And in the end a mistake like that is
10 a mistake, correct? Not seeing something
11 and hitting it, isn't that what insurance is
12 for?

13 A. Correct. Navigational errors are fair. If
14 it was, well, it's a whole other thing, but
15 if fatigue came into it that would be a
16 separate issue.

17 (Off the record discussion.)

18 Q. We talked about, I just want to make sure we
19 talked about the things that are here. We
20 talked about the wind and waves. We talked
21 about the -- okay. So you say your data
22 obtained from the National Boyd Data Center,
23 the National Geographic Atmosphere
24 Administration utilizing the Caribbean

↑

170

1 Valley Station indicates wind speeds,
2 etcetera. Is that the only station you
3 checked?

4 A. I think if we read further on there might be

5 more stations. That's certainly the only
6 one I documented. The reason --

7 Q. That's why I asked.

8 A. The reason being is, the National Boyd Data
9 Center speaks to wave height and they would
10 have spoken to wave height quite
11 specifically in the area of the grounding.

12 Let's read what I said before I
13 assume. We're talking about -- Oh, okay.
14 This Boyd, I believe, is close to St.
15 Martin. There are not many Boyd data, data
16 Boyd in the Caribbean, or at least not those
17 that the public has access to get the data
18 which is why I would have been so specific
19 about the position because it's not really
20 as close to any of our presumed courses, but
21 it's the best data we have. And, obviously,
22 wave height data is a little bit more broad
23 than wind data.

24 Q. Wave height can be variable depending on

↑

171

1 where you are, correct?

2 A. Yes. I mean, you're going to get the land
3 effect of the wave. What we were interested

4 here was the swell. So we're talking about
5 how the swell covers a large area and it's
6 different from what's caused by the wind and
7 it comes from far away. That's the data that
8 we are looking for here because it wouldn't
9 be largely different from what is in Boca
10 Chica.

11 Q. From Boca Chica. Is this relevant at all
12 then to the conditions that were happening
13 down near Aruba as the vessel was moving
14 east and deciding whether or not to change
15 course?

16 A. This is the closest data that we have in the
17 Caribbean basin.

18 Q. So it's almost the complete opposite end of
19 the chart, correct?

20 A. Of the Caribbean, yes.

21 Q. The Eastern Caribbean?

22 A. Yes, pretty much the opposite end of the
23 Caribbean. If you draw a square around it
24 and put corners on it. But in terms of wave

↑

172

1 action the Caribbean isn't that big of a
2 place. At least that caused by a swell

3 rather than wind and local weather which is
4 other data which we consulted.

5 Q. And you've talked about the boat that it was
6 designed as an offshore catamaran. This has
7 really all been covered by us with the
8 exception of the amount of fuel that was
9 onboard.

10 You mention here that the insured
11 notes in his deposition he's not aware of
12 what leeway is. I don't recall how that was
13 asked but it may have been a language issue.
14 That's something that's a question for him
15 at some point.

16 Are you aware of Mr. Andersson's
17 history as far as boating?

18 A. I believe, I've read some documents maybe in
19 his counterclaim where he has a Swedish Navy
20 something. I would have been aware of that
21 when we wrote this because I don't think
22 we've had any new documents since we wrote
23 this report.

24 There is something that we come

↑

1 across, and honestly, I can't remember what

2 was in the documentation we were given. But
3 it's not uncommon we come across people,
4 especially, to be honest, in the States,
5 where we will get somebody that says, well,
6 I was in the Navy and I've got this piece of
7 paper that says I was in the Navy. And as
8 we look further we find, okay, well, that
9 person wasn't the watch keeping officer they
10 were the cook, or just to make an example.
11 While on the surface it looked like it is
12 information that would be complimentary to
13 the argument it's not. Does that make
14 sense?

15 I'm not suggesting that's the cases
16 in this case, I'm just saying that's
17 probably why we wrote things in there
18 because we're trying to qualify it.

19 Q. It may make sense but I wasn't sure how much
20 you had really spoken with him or checked in
21 on what were his qualifications; how did he
22 know sailing; how long had he sailed; any of
23 that information?

24 A. We wouldn't have done that in the statement.

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1 To be honest, in a normal circumstance we
2 probably would have relied on the documents
3 submitted to insured when he filed the
4 claim, or sorry, when he filed his policy
5 had we moved into an adjustment stage.

6 In this case, you know, we were
7 looking at the incident itself. The rest is
8 sort of questions you can ask later.

9 The only information I have on his
10 qualifications, as far as I can remember, is
11 what is in the depositions in the court
12 filings.

13 Q. I just want to go through this summary.
14 Your final conclusion was the vessel sailed
15 outside navigational limits, which you're
16 not sure of now because of Aves Island,
17 correct?

18 A. Yes. That's beyond me, that's an argument
19 for you guys.

20 Q. You state here that the passage planning was
21 inadequate. What was your basis for that?

22 A. The weather, and the safe harbor, the
23 charting, the log keeping. I think, I would
24 imagine if we wrote this in the summary we

1 qualified it in the report, correct?

2 Q. Yes.

3 A. That answer is going to be a lot more
4 accurate than what I give you now.

5 Q. And we've discussed those issues in the
6 report and outside of it.

7 The conditions reported would not
8 have rendered the vessel anywhere near a
9 state where it was unsafe to return to a
10 nearby safe port provided it was well
11 maintained and had adequate crew.

12 A. Correct.

13 Q. My question about that is, that same
14 statement about those conditions, I believe
15 you stated and I just want to confirm, that
16 also would not have rendered it
17 inappropriate to continue on the voyage as
18 long as the crew member was able to maintain
19 watch and allow Mr. Andersson to sleep once
20 they had changed course for his comfort?

21 A. Correct. That comes into the qualification
22 of adequate crew.

23 Q. And the voyage was unseaworthy from the
24 outset and the situation worsened as the

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1 voyage continued.

2 Why do you say it was unseaworthy
3 from the outset?

4 A. Honestly, I can't remember. What does the
5 report say?

6 Q. It may be because you assumed that the crew
7 member was incapacitated immediately upon
8 departure, that was the only thing I could
9 see and I wanted to make sure that we had an
10 understanding of what you meant there.

11 A. I need to go back and have a look. Because
12 I would argue with myself on that one now
13 just on the basis that that's not the
14 outset, that's after the outset.

15 I think it was probably in relation
16 to the actual passage planning. Again, I'm
17 going to have to go back and look. But
18 effectively if you don't have a viable
19 passage plan when you depart, I would not
20 consider you seaworthy. That is part of
21 going offshore is knowing where you're
22 going, knowing what the conditions are going
23 to be, and what you're going to do if things

24 go wrong.

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1 And it seems quite along of things
2 seem to have gone off the rails here;
3 whether it be the weather, the crew, the
4 course. I don't think we should factor in
5 the boat. It would seem that prior planning
6 was not undertaken to the level that it
7 should have been, otherwise a lot of this
8 stuff shouldn't have happened.

9 Q. Would you agree that you can't plan whether
10 or not a crew member will get sick?

11 A. I agree that entirely. Seasickness is a
12 weird thing. You can't predict it. The
13 weather I would say is a huge contributing
14 factor there.

15 Q. That was my next question to you.

16 As far as that goes, did you have
17 an understanding of and did you document
18 what the weather report was at the time, not
19 what the actual weather was but what the
20 predictions were for the time frame when
21 Mr. Andersson set off?

22 A. I definitely know that we don't have any

23 separate documentation as to the
24 predictions. And if we didn't speak to the

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1 predictions in our report then we didn't
2 specifically look at the predictions. If
3 the predictions were there we would have
4 written them in the report.

5 However, the weather described is
6 really not that terrible or that unusual for
7 the Caribbean, especially when you go
8 offshore. 10 to 12 foot seas and 25 knots
9 of wind are a gusty day out on the ocean.
10 That's not a Caribbean sea storm per se.

11 Q. You already said that, assuming Mr. Noah had
12 recorded it's not unreasonable to have
13 continued on the voyage. Given that, is it
14 unreasonable to have set out to begin with
15 in these conditions that you said really
16 aren't that bad?

17 A. Can you say that again?

18 Q. The conditions that he had in front of him
19 as what you understand the prediction to be,
20 what he ended up with, is it unreasonable to
21 have set out in those conditions?

22 A. I think the argument of reasonability here
23 is really not so much about setting out it's
24 about being prepared for those conditions.

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1 It's reasonable that you're going to
2 encounter those conditions. We've had
3 assertions it was unsafe and you couldn't
4 turn around because it was so dangerous.
5 The crew member has become not just seasick
6 but reportedly incapacitatedly seasick.

7 In terms of prior planning and
8 preparation again, you know, these are not
9 conditions that should be unexpected. This
10 isn't a freak weather system coming through
11 and really whipping it up, this is just a
12 blowy day.

13 Q. The seasickness of a crew member could be
14 completely unexpected, true?

15 A. Yes, absolutely.

16 MS. NIEMEYER: I have no further
17 questions. It's like 1:59.

18 Will you have other questions?

19 MR. GOLDMAN: No, I have nothing.

20 MS. NIEMEYER: Standing order for

21 the transcript.

22 (Whereupon the deposition was
23 concluded at 2:00 p.m.)
24

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1 ERRATA SHEET DISTRIBUTION INFORMATION

2 DEPONENT'S ERRATA & SIGNATURE INSTRUCTIONS

3

4 ERRATA SHEET DISTRIBUTION INFORMATION

5 The original of the Errata Sheet has
6 been delivered to Michael Goldman, Esquire.

7 When the Errata Sheet has been
8 completed by the deponent and signed, a copy
9 thereof should be delivered to each party of
10 record and the ORIGINAL forwarded to
11 Michelle Niemeyer, Esquire, to whom the
12 original deposition transcript was
13 delivered.

14

15 INSTRUCTIONS TO DEPONENT

16 After reading this volume of your
17 deposition, please indicate any corrections
18 or changes to your testimony and the reasons
19 therefor on the Errata Sheet supplied to you

20 and sign it. DO NOT make marks or notations
21 on the transcript volume itself. Add
22 additional sheets if necessary. Please
23 refer to the above instructions for errata
24 sheet distribution information.

↑

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1 PLEASE ATTACH TO THE DEPOSITION OF:
2 Andrew Ball
3 CASE: Great Lakes Insurance
4 DATE TAKEN: January 21, 2022
5 ERRATA SHEET
6 Please refer to page 181 for errata sheet
7 instructions and distribution instructions.

8
9 PAGE LINE CHANGE REASON

10

11

12

13

14

15

16 I have read the foregoing transcript
17 of my deposition and except for any
18 corrections or changes noted above, I hereby

19 subscribe to the transcript as an accurate
20 record of the statements made by me.

21 Executed this day of , 2022.

22

23

24 ANDREW BALL

↑

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1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)

3

4 I, Linda Bernis, a Registered
5 Professional Reporter and Notary Public in
6 and for the Commonwealth of Massachusetts,
7 do hereby certify that ANDREW BALL, the
8 witness who remotely appeared, was duly
9 sworn by me and that such deposition is a
10 true record of the testimony given by the
11 witness.

12 I further certify that I am neither
13 related to or employed by any of the parties
14 in or counsel to this action, nor am I
15 financially interested in the outcome of
16 this action.

17 In witness whereof, I have hereunto

```
18      set my hand and seal this 10th day of
```

19 February, 2022.

20

21

22 Notary Public

23 My Commission expires:

24 July 25, 2025